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IN THE SENATE OF THE UNITED STATES

JANUARY 7 (legislative day, JANUARY 6), 1953

Mr. McCARRAN (for himself, Mr. MAGNUSON, and Mr. CHAVEZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That no provision of any contract entered into by the United
4 States, relating to the finality or conclusiveness of any de-
5 cision of the Government contracting officer, or of the head
6 of the department or agency of the United States concerned
7 or his representative, in a dispute involving a question of fact
8 arising under such contract, shall be construed to limit judicial
9 review of any such decision only to cases in which fraud by
10 such Government contracting officer or such head of depart-
11 ment or agency or his representative is alleged.

To permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

By Mr. McCARRAN, Mr. MAGNUSON, and Mr.
CHAVEZ

JANUARY 7 (legislative day, JANUARY 6), 1953
Read twice and referred to the Committee on the
Judiciary

83D CONGRESS
1ST SESSION

H. R. 1839

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 1953

Mr. REED of Illinois introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit reviews of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That no provision of any contract entered into by the United
4 States, relating to the finality or conclusiveness, in a dispute
5 involving a question arising under such contract, of any
6 decision of an administrative official, representative, or board,
7 shall be pleaded as limiting judicial review of any such de-
8 cision to cases in which fraud by such official, representative,
9 or board is alleged; and any such provision shall be void

1 with respect to any such decision which the General Ac-
2 counting Office or a court, having jurisdiction, finds fraudu-
3 lent, grossly erroneous, so mistaken as necessarily to imply
4 bad faith, or not supported by reliable, probative, and sub-
5 stancial evidence.

6 SEC. 2. No Government contract shall contain a pro-
7 vision making final on a question of law the decision of an
8 administrative official, representative, or board.

A BILL

To permit reviews of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

By Mr. REED of Illinois

JANUARY 16, 1953

Referred to the Committee on the Judiciary

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued Feb. 5, 1953
For actions of Feb. 4, 1953
83rd-1st, No. 20

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HIGHLIGHTS: Senate Committee reported bill to continue Reorganization Act. Senate concurred in House amendments to bill creating position as Under Secretary of State for Administration. Senate Committee reported CCC Board nominations. Sen. Monroney expressed fear USDA is not taking cattle-price decline seriously enough. Sen. Ferguson commended budget-restriction order. Sen. Wiley spoke of concern about dairy-price decline.

SENATE

1. REORGANIZATION. The Government Operations Committee reported without amendment H. R. 1979, to continue the Reorganization Act of 1949 in its present form until April 1, 1955 (S. Rept. 36)(p. 847). Sen. Taft announced that this bill will be considered Feb. 6 (p. 857). Sen. Kennedy inserted a joint statement of himself and Sens. Humphrey and Jackson opposing the amendment, which had been sponsored by the committee earlier in the week, so as to modify the present act by permitting rejection of plans by a simple majority (p. 846).
Concurred in the House amendments to S. 243, establishing a temporary position as Under Secretary of State for Administration, who would study the organization and management of the Department (pp. 846-7). This bill will now be sent to the President.
2. NOMINATIONS. The Agriculture and Forestry Committee reported favorably the nominations of Messrs. Davis, Short, Horse, and Coke to the CCC Board (p. 858).
3. FARM PRICES. Sen. Monroney spoke on the recent decline of cattle prices and expressed a fear that Secretary Benson is not taking it seriously enough (pp. 909-11).
Sen. Wiley expressed concern about the dairy-price decline, set forth several possible solutions, and requested that Secretary Benson make an early announcement about price-support policy (pp. 856-7).
4. BUDGETING. Sen. Ferguson commended the recent order limiting the rate of obligations and the filling of personnel vacancies, and he inserted the full text of the Budget Bureau's letter to department heads on this matter. Sen. Chavez also

commended the order. (pp. 908-9.)

Sen. Byrd inserted a report from the Committee on Reduction of Nonessential Expenditures recommending review of unexpended balances (p. 843).

5. PURCHASING. The Judiciary Committee reported with amendments S. 24, to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged (S. Rept. 32)(p. 840).
6. HOUSING. The Banking and Currency Committee reported without amendment S. J. Res. 27, to increase the Federal Housing Administration title I loan insurance authorization from \$1.25 billion to \$1.75 billion (S. Rept. 34)(p. 840).
7. COPPER IMPORTS. The Finance Committee reported without amendment H. R. 568, to continue until June 30, 1954, the suspension of certain import taxes on copper (S. Rept. 35)(p. 847).
8. WHEAT AGREEMENT. Sen. Morse inserted Oregon Wheat Growers League resolutions favoring renewal of an International Wheat Agreement (pp. 839-40).
9. PERSONNEL LEAVE. Sen. Williams charged that, in some cases, Government employees are discharged, are paid for their terminal leave, and then are immediately rehired; and he recommended a change in the law to prevent this (pp. 902-5). Sen. Schoepel commended the statement (p. 906).
10. LOANS. Sen. Morse deplored an increase in interest rates as suggested by the Treasury Department (p. 905).
11. ECONOMIC CONTROLS. The Banking and Currency Committee announced that it will begin hearings Feb. 17 on economic controls (p. D54).
12. ADJOURNED until Fri., Feb. 6 (p. 911).

HOUSE

13. LIVESTOCK SUBCOMMITTEE. The Livestock Subcommittee of the House Committee on Agriculture has been named as follows: Reps. Hill (chairman), Hoeven, Bramblett, Dague, Harvey, Harrison, Poage, McMillan, Albert, Thompson, and Herlong.

ITEMS IN APPENDIX

14. SOIL CONSERVATION. Sen. Humphrey inserted Sen. Morse's speech before the National Agricultural Limestone Institute in which he discussed the great necessity to protect our topsoil and the importance of our agricultural base to the strength of our civilization (pp. 477-80).
15. FARM POLICY. Sen. Hunt inserted a constituent's letter to the Secretary discussing the formulation of policies for the Department (pp. 485-86).
16. DAIRY INDUSTRY. Extension of remarks by Rep. Wharton stating that the Secretary's appointment was acclaimed by New York State farmers, and asking for a change in milk policy (p. A488).
17. REORGANIZATION. Rep. Javits spoke in favor of the bill providing for a second Under Secretary for the State Department (p. A488).

Calendar No. 21

83D CONGRESS
1st Session }

SENATE }

REPORT
No. 32

FINALITY CLAUSES IN GOVERNMENT CONTRACTS

FEBRUARY 4, 1953.—Ordered to be printed

Mr. LANGER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 24]

The Committee on the Judiciary, to which was referred the bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of the proposed legislation, as amended, is to overcome the inequitable effect, under a recent Supreme Court decision, of language in Government contracts which makes the decision of the contracting officer or the head of the agency final with respect to questions of fact; and to prohibit the insertion of language making the decision of a contracting officer final on questions of law.

AMENDMENTS

Strike out all after the enacting clause and insert in lieu thereof the following:

That no provision of any contract entered into by the United States, relating to the finality or conclusiveness, in a dispute involving a question arising under such contract, of any decision of an administrative official, representative, or board, shall be pleaded as limiting judicial review of any such decision to cases in which fraud by such official, representative, or board is alleged; and any such provision shall be void with respect to any such decision which the General Accounting Office or a court, having jurisdiction, finds fraudulent, grossly erroneous, so mis-

taken as necessarily to imply bad faith, or not supported by reliable, probative, and substantial evidence.

SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of an administrative official, representative, or board.

Amend the title to read as follows:

A bill to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

STATEMENT

This bill, as amended, is identical with a bill of the Eighty-second Congress, which passed the Senate unanimously in the closing days but too late for further action in the other body.

For a number of years it has been the practice of Government agencies to insert in Government contracts a so-called finality clause, which reads as follows:

ARTICLE 15

Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed.

In November of 1951 the Supreme Court decided in the case of *United States v. Wunderlich, et al.*, that the insertion of this clause in the contract foreclosed a judicial review of disputes concerning questions of fact, unless the aggrieved party alleged and proved fraud with respect to the decision of the department head or contracting officer. The Court went on to say:

by fraud we mean conscious wrongdoing, an intention to cheat or be dishonest.

The impact of this decision on the many business firms who, in a condition of expanding production with respect to the defense of the United States, must deal with many of the Government departments in Government construction and defense materials, was one that could only cause great expense to the United States in that the contractors would be forced to puff up their bids so as to be sure of sufficient funds to provide for unforeseen contingencies.

It must also be borne in mind that to the same extent this decision would operate to the disadvantage of an aggrieved contractor, it would also operate to the disadvantage of the Government in those cases, as sometimes happens, when the contracting officer makes a decision detrimental to the Government interest in the claim.

For these reasons, the Committee on the Judiciary, after extensive hearings held on a similar bill (S. 2487) during the Eighty-second Congress, second session, at which all interested parties, both private and governmental, were heard, recommends favorable consideration of this legislation.

S. 24 will have the effect of permitting review in the General Accounting Office or a court with respect to any decision of a contracting officer or a head of an agency which is found to be fraudulent, grossly erroneous, so mistaken as necessarily to imply bad faith, or not supported by reliable, probative, and substantial evidence. In other words, in those instances where a contracting officer has made a mistaken decision,

either wittingly or unwittingly, it will not be necessary for the aggrieved party to, in effect, charge him with being a fraud or a cheat in order to effect collection of what is rightfully due.

The committee wishes to point out with respect to the language contained in the bill, "in the General Accounting Office or a court, having jurisdiction," that it is not intended to narrow or restrict or change in any way the present jurisdiction of the General Accounting Office, either in the course of a settlement or upon audit; that the language in question is not intended either to change the jurisdiction of the General Accounting Office or to grant any new jurisdiction, but simply to recognize the jurisdiction which the General Accounting Office already has.

It should also be pointed out that in speaking of a court "having jurisdiction" the committee intends to negative both the possibility of a construction which would give basis for a contention that this bill itself was granting a court jurisdiction to review Government contracts; and also any construction that would give a basis for a collateral attack on such contracts in a court not having direct jurisdiction of the contract itself.

There are no departmental letters attached to this report for the reason that the representatives of the departments stated their views in the public hearings which have been printed and are available to interested parties.



Calendar No. 21

83D CONGRESS
1ST SESSION

S. 24

[Report No. 32]

IN THE SENATE OF THE UNITED STATES

JANUARY 7 (legislative day, JANUARY 6), 1953

Mr. McCARRAN (for himself, Mr. MAGNUSON, and Mr. CHAVEZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 4, 1953

Reported by Mr. LANGER, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That no provision of any contract entered into by the United*
4 *States, relating to the finality or conclusiveness of any de-*
5 *cision of the Government contracting officer, or of the head*
6 *of the department or agency of the United States concerned*
7 *or his representative, in a dispute involving a question of fact*
8 *arising under such contract, shall be construed to limit judicial*
9 *review of any such decision only to cases in which fraud by*

1 such Government contracting officer or such head of depart-
2 ment or agency or his representative is alleged.

3 *That no provision of any contract entered into by the United*
4 *States, relating to the finality or conclusiveness, in a dispute*
5 *involving a question arising under such contract, of any*
6 *decision of an administrative official, representative, or board,*
7 *shall be pleaded as limiting judicial review of any such de-*
8 *cision to cases in which fraud by such official, representative,*
9 *or board is alleged; and any such provision shall be void*
10 *with respect to any such decision which the General Account-*
11 *ing Office or a court, having jurisdiction, finds fraudulent,*
12 *grossly erroneous, so mistaken as necessarily to imply bad*
13 *faith, or not supported by reliable, probative, and substantial*
14 *evidence.*

15 *SEC. 2. No Government contract shall contain a pro-*
16 *vision making final on a question of law the decision of an*
17 *administrative official, representative, or board.*

Amend the title so as to read: "A bill to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes."

83d CONGRESS
1st SESSION

S. 24

[Report No. 32]

A BILL

To permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

By Mr. McCARRAN, Mr. MAGNUSON, and Mr.

CHAVEZ

JANUARY 7 (legislative day, JANUARY 6), 1953

Read twice and referred to the Committee on the
Judiciary

FEBRUARY 4, 1953

Reported with amendments

83D CONGRESS
1ST SESSION

H.R. 3634

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1953

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code so as to provide for a limited judicial review of decisions of Federal officers under “finality clauses” in Government contracts.

8 "In any case in the Court of Claims or in any District
9 court which is founded upon an express contract with the
10 United States containing a provision purporting to make

1 the decision of a Federal officer final and conclusive with
2 respect to any dispute involving a question of fact arising
3 under the contract, the court shall nevertheless decide the
4 case without regard to any such decision which it finds was
5 founded on fraud, or involved such gross mistake as neces-
6 sarily implied bad faith, or was arbitrary or capricious.

7 "This section shall not apply with respect to any such
8 decision which became final more than one year before the
9 date of enactment of this section."

10 SEC. 2. The analysis of chapter 91 of title 28 of the
11 United States Code is amended by adding at the end thereof
12 the following:

"1506. Review of decisions under 'finality clauses' in Government contracts."

83d CONGRESS
1ST SESSION

H. R. 3634

A BILL

To amend title 28 of the United States Code so as to provide for a limited judicial review of decisions of Federal officers under "finality clauses" in Government contracts.

By Mr. CELLER

MARCH 3, 1953

Referred to the Committee on the Judiciary

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued May 7, 1953
For actions of May 6, 1953
83rd-1st, No. 82

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HIGHLIGHTS: Senate passed: 3rd supplemental appropriation bill, adding item for rural-telephone loans; Commission to study intergovernmental relations; Comission to study reorganization; Export-control continuation. Sen. Taft agreed to bring up cotton-exports insurance bill today but criticized it. Sen. Humphrey introduced and discussed bill to require use of county committees in USDA.

SENATE

1. APPROPRIATIONS. Passed with amendments H. R. 4664, the third supplemental appropriation bill for 1953 (pp. 4761-78). Sens. Bridges, Ferguson, Cordon, Hayden, and Russell were appointed conferees (p. 4778). Agreed to the committee amendment adding \$15,000,000 for rural-telephone loans (pp. 4762-3). There was discussion of Federal-employee leave policy in connection with a Williams amendment regarding CRS (pp. 4763-78).
2. INTERGOVERNMENTAL RELATIONS. Passed with amendments S. 1514, to establish a Commission on Intergovernmental Relations to study and make recommendations on Federal-State-local relations, functions, resources, etc. (pp. 4750-3).
3. REORGANIZATION. Passed as reported S. 106, to establish a Commission on Organization of the Executive Branch (pp. 4753-4).
4. EXPORT CONTROL. Passed S. 1739, to continue export-control authority, with a Taft amendment to extend the law for 1 year instead of 3 (pp. 4747-8).
5. ADMINISTRATIVE PROCEDURE. Passed without amendment S. 18, to eliminate certain exemptions from the Administrative Procedure Act, including the International Wheat Agreement Act, Export Control Act, Sugar Control Extension Act, part of the Defense Production Act, etc. (p. 4731).
6. FLOOD CONTROL. Passed as reported S. 117, to amend Sec. 7 of the Flood Control Act of 1941 relating to apportionment of moneys received on account of the leasing of lands acquired by the U. S. for flood-control purposes (pp. 4748-9).
7. DISBURSEMENTS. Passed as reported S. 1307, to continue and amend authority of disbursing officers to cash checks and perform other services for U. S. employees abroad (p. 4749).

8. PROPERTY ACQUISITION. Passed with amendment S. 30, to provide for jury trials in condemnation proceedings (pp. 4757-8).
9. CONTRACTS. Debated but passed over S. 24, to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged (pp. 4729-30, 4756-7).
10. COTTON EXPORTS. Sen. Maybank attempted to bring up S. 1413, to provide war-risk insurance on exported cotton, etc. Sen. Taft criticized the bill, but agreed to have it brought up today. (pp. 4747-8.)
11. PERSONNEL. Sen. Johnston, S. C., criticized the new security order relating to Federal employment and said there is currently "a strong tendency to completely destroy the civil-service-merit system" (pp. 4778-80).

HOUSE

12. RESEARCH. The Interstate and Foreign Commerce Committee ordered reported (but did not actually report) with amendments H. R. 4689, amending the National Science Foundation Act regarding quorums of Board members and providing for a open-end authorization to carry out the Act (p. D377).
13. FARM LANDS. Received a Hawaii Legislature memorial urging appropriation of \$20,000,000 for land and water development in Hawaii (p. 4792).

14.

ITEMS IN APPENDIX

14. TREATIES. Rep. Smith, Wis., inserted a letter from Paul Redmond favoring Sen. Bricker's proposal to limit treaty-making powers (pp. A2553-4).
15. BUDGETING. Extension of remarks of Rep. Keating favoring item-veto power on appropriation bills (p. A2555).

BILLS INTRODUCED

16. COUNTY COMMITTEES. S. 1847, by Sen. Humphrey, to require the Secretary of Agriculture to continue use of local and State committees in carrying out the Soil Conservation and Domestic Allotment Act, to require that such committees be used in carrying out farm price-support and crop-insurance programs, and to provide for election of such State committees by members of county committees; to Agriculture Committee (p. 4728). Remarks of author (p. 4780).
17. INTEREST RATES. S. 1848, by Sen. Sparkman, to prohibit certain increases in interest rates under the National Housing Act; to Banking and Currency Committee (p. 4728). Remarks of author, including charges that recent increases in interest rates are not in the interest of farmers (pp. 4780-7).
18. /H. Res. 228, by Rep. Broihill, directing the Post Office and Civil Service Committee to investigate personnel practices with particular reference to job security of career employees; to Rules Committee (pp. 4791-2).

C O M M I T T E E H E A R I N G A N N O U N C E M E N T S F O R M A Y 7: Soil conservation in general, H. Agriculture (McArdle to testify)... USDA appropriations, S. Appropriations. Joint Budget Committee, S. Government Operations (exec).

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For supplemental information and copies of legislative material referred to, call Ext. 4654 or send to Room 105A.

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H. R. 490. An act to authorize the use of the Sackets Harbor Military Cemetery for the burial of war and peacetime veterans of the Armed Forces of the United States;

H. R. 1383. An act to provide for distribution of moneys of deceased restricted members of the Five Civilized Tribes not exceeding \$500, and for other purposes;

H. R. 1571. An act to amend the Alaska game law;

H. R. 1812. An act relating to the activities of temporary and certain other employees of the Bureau of Land Management; and

H. R. 4072. An act relating to the disposition of certain former recreational demonstration project lands by the Commonwealth of Virginia to the School Board of Mecklenburg County, Va.; to the Committee on Interior and Insular Affairs.

H. R. 734. An act for the relief of Mihai Handrabura;

H. R. 738. An act for the relief of the widow and children of the late John L. LeCours;

H. R. 778. An act for the relief of Mrs. Jennie Maurelio;

H. R. 821. An act for the relief of the American Barrel Co., Inc.;

H. R. 837. An act for the relief of Lt. Col. James D. Wilmeth;

H. R. 851. An act for the relief of Alfred J. Stahl;

H. R. 890. An act for the relief of William H. Lubkin, Jr.;

H. R. 898. An act for the relief of Mrs. Rose Kaczmarczyk;

H. R. 974. An act for the relief of Dr. Morad Malek-Aslani;

H. R. 1211. An act for the relief of Isak Benmuvhur;

H. R. 1772. An act for the relief of Kenneth R. Kleinman;

H. R. 1901. An act for the relief of Cleo Picardi;

H. R. 1904. An act for the relief of Patricia A. Pembroke;

H. R. 1905. An act for the relief of Montgomery of San Francisco, Inc.;

H. R. 2034. An act for the relief of Lt. (Jg.) Samuel E. McMillan;

H. R. 2237. An act to increase criminal penalties under the Sherman Antitrust Act;

H. R. 2813. An act for the relief of William E. Aitcheson;

H. R. 2815. An act for the relief of Floyd C. Barber;

H. R. 3446. An act for the relief of Mrs. Emily Wilhelm;

H. R. 3733. An act for the relief of Mrs. Anna Holder;

H. R. 3823. An act for the relief of Raymond D. Beckner and Lula Stanley Beckner;

H. R. 4285. An act for the relief of Arthur Staveley;

H. R. 4471. An act for the relief of Lt. Col. Homer G. Hamilton;

H. J. Res. 228. Joint resolution to permit the entry of 500 children under 6 years of age, adopted by United States citizens while serving abroad in the Armed Forces of the United States, or while employed abroad by the United States Government; and

H. J. Res. 238. Joint resolution granting the status of permanent residence to certain aliens; to the Committee on the Judiciary.

H. R. 1563. An act to amend Veterans Regulation No. 2 (a), as amended, to provide that the amount of certain unnegotiated checks shall be paid as accrued benefits upon the death of the beneficiary-payee, and for other purposes; to the Committee on Finance.

H. R. 2761. An act to revive and reenact the act of December 21, 1944, authorizing the city of Clinton Bridge Commission to construct, maintain, and operate a bridge and approaches thereto across the Mississippi River, at or near the cities of Clinton, Iowa, and Fulton, Ill., as amended; and

H. R. 4779. An act to authorize the adoption of a report relating to seepage and

drainage damages on the Illinois River, Ill.; to the Committee on Public Works.

H. R. 2832. An act to authorize Federal aid with respect to the costs of constructing that portion of an approved hospital project which was commenced without Federal participation and prior to January 1, 1953; to the Committee on Labor and Public Welfare.

H. R. 4974. An act making appropriations for the Departments of State, Justice, and Commerce, for the fiscal year ending June 30, 1954, and for other purposes; to the Committee on Appropriations.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE APPENDIX

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the Appendix, as follows:

By Mr. HUMPHREY:

Article written by him entitled "Peace Is Dynamic," published in the May 1953 issue of the Intercollegian.

By Mr. POTTER:

Address delivered by Hon. Arthur Summerfield, Postmaster General, before the Jefferson National Expansion Association luncheon held at St. Louis, Mo., on April 30, 1953.

By Mr. AIKEN:

Address delivered by William D. Hassett at Warm Springs, Ga., April 12, 1953, at exercises on the eighth anniversary of the death of Franklin D. Roosevelt.

By Mr. GRISWOLD:

Address relating to the supervision of veterans' training by the Veterans' Administration, delivered by F. B. Decker, Nebraska State superintendent of public instruction, before the National Association of State Approval Agencies, on May 5, 1953, at Denver, Colo.

By Mr. DIRKSEN:

Editorial entitled "The New District Attorney," published in the Illinois State Journal of April 30, 1953, paying tribute to John B. Stoddart, Jr., the new United States district attorney for the southern district of Illinois.

By Mr. SMATHERS:

Article relating to inquiry into the shipment of war materials to Red China, written by Arthur Krock and published in the New York Times of May 5, 1953.

By Mr. WILEY:

Article entitled "Norway's Effort Is Sincere, but Traditions Show Results," and article entitled "Denmark: The Weakest Link in a Chain of Military Hopes," both written by Crosby S. Noyes and published in the Washington Evening Star of May 1 and May 2, 1953, respectively.

CALL OF THE CALENDAR

The PRESIDENT pro tempore. The morning business is closed.

Mr. TAFT. I move that the Senate proceed to the consideration of the calendar of bills and resolutions under rule VIII, starting at the beginning of the calendar.

The PRESIDENT pro tempore. That is the regular order of business and the question is on agreeing to the motion of the Senator from Ohio.

The motion was agreed to.

Mr. TAFT. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Griswold	Millikin
Anderson	Hayden	Monroney
Barrett	Hendrickson	Morse
Beall	Hennings	Mundt
Bennett	Hickenlooper	Murray
Bricker	Hill	Neely
Bridges	Hoey	Pastore
Bush	Holland	Payne
Butler, Md.	Humphrey	Potter
Byrd	Hunt	Purtell
Carlson	Ives	Robertson
Case	Jackson	Russell
Chavez	Jenner	Saltonstall
Clements	Johnson, Colo.	Schoopel
Cooper	Johnston, S. C.	Smathers
Cordon	Kefauver	Smith, Malone
Daniel	Kennedy	Smith, N. J.
Dirksen	Kerr	Smith, N. C.
Douglas	Kagore	Sparkman
Duff	Knowland	Stennis
Dworshak	Kuchel	Symington
Eastland	Langer	Taft
Ellender	Long	Thye
Ferguson	Magnuson	Tobey
Flanders	Malone	Watkins
Frear	Mansfield	Welker
Fulbright	Martin	Wiley
George	Maybank	Williams
Gillette	McCarren	Young
Goldwater	McCarthy	
Gore	McClellan	

Mr. SALTONSTALL. I announce that the Senator from Nebraska [Mr. BUTLER] is necessarily absent.

The Senator from Indiana [Mr. CAPEHART] is absent on official business.

Mr. CLEMENTS. I announce that the Senator from Rhode Island [Mr. GREEN] is absent by leave of the Senate.

The Senator from Texas [Mr. JOHNSON] and the Senator from New York [Mr. LEHMAN] are absent on official business.

The PRESIDENT pro tempore. A quorum is present.

The clerk will state the first order of business on the calendar.

BILL PASSED OVER

The bill (S. 242) to provide for the establishment of a Veterans' Administration domiciliary facility at Fort Logan, Colo., was announced as first in order.

Mr. TAFT. Mr. President, I ask that the bill be passed over. Neither Senator from Colorado is present.

The PRESIDENT pro tempore. The bill will be passed over.

JUDICIAL REVIEW OF DECISIONS OF GOVERNMENT CONTRACTING OFFICERS—BILL PASSED TO FOOT OF CALENDAR

The bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged was announced as next in order.

Mr. SMATHERS rose.

Mr. McCARRAN. Mr. President, will the Senator from Florida withhold his objection until I have an opportunity to make a brief explanation?

Mr. SMATHERS. Certainly.

Mr. McCARRAN. Mr. President, the purpose of this bill is to offset the decision of the Supreme Court in the so-

called Wunderlich case. In that case the Court held—in an opinion written by Mr. Justice Minton—that where a Government contract provides that the decision of a contracting officer, or the head of an agency, is final, the losing party in a dispute over any decision such a contracting officer may make under a contract has no right of review of such decision in the courts, unless he can allege and prove fraud. In his decision, Mr. Justice Minton, speaking for the Supreme Court, said:

By fraud we mean conscious wrongdoing, an intention to cheat or be dishonest.

The effect of this decision, of course, is such that even if an honest mistake has been made, it is necessary that the aggrieved party allege and prove that some Government employee deliberately cheated, or intended to defraud him, in order to get a court review of the question.

Up until the time this decision was handed down, there was no such rigid standard, and the review of administrative decisions was not so limited.

The Supreme Court itself recognized that the standard it was laying down was unusually rigid, and declared: "The limitation upon this arbitral process is fraud, placed there by this Court. If the standard of fraud that we adhere to is too limited, that is a matter for Congress." The Supreme Court thus invited action by Congress, along the lines which this bill would take.

Senators who have looked into this matter know that this decision of the Supreme Court cuts two ways. It can hurt the Government badly, as well as doing an injustice to contractors. In a recent case, which arose since this Supreme Court decision, the Government did in fact lose. This recent case arose in Philadelphia. There had been an honest mistake by a contracting officer. The Comptroller General of the United States attempted to recover on behalf of the Government, because the mistake was against the Government. The contractor interposed a defense based on the Supreme Court decision in the Wunderlich case. The court followed this Supreme Court decision—as it was bound to do—and the result was a failure of recovery on behalf of the Government.

It was because of this case, and the possibility of similar cases, that the Comptroller General of the United States appeared and testified before the Judiciary Committee in behalf of this bill.

This bill was the subject of extensive hearings in the last Congress; and, as far as I know, the bill is not now opposed by any of the interested parties.

Mr. SALTONSTALL. Mr. President, will the Senator yield for a question?

Mr. MCCARRAN. I yield.

Mr. SALTONSTALL. Personally I have no objection to this bill. I am informed that the Department of Defense objected. I should like to ask if the Senator would be willing to allow the bill to go to the foot of the calendar. I should like to ascertain if there is objection on the part of the Department of Defense. If not, I have no personal ob-

jection to the bill. However, as chairman of the Armed Services Committee, I should like to obtain that information.

Mr. MCCARRAN. I have no objection.

Mr. SALTONSTALL. Mr. President, I ask that the bill be placed at the foot of the calendar.

The PRESIDING OFFICER (Mr. CARLSON in the chair). Without objection, the bill will be passed to the foot of the calendar.

The clerk will state the next order of business.

ERICH ANTON HELFERT—BILL PASSED OVER

The bill (S. 56) for the relief of Erich Anton Helfert was announced as next in order.

Mr. GORE. Over, by request.

Mr. MCCARRAN. Mr. President, will the Senator withhold his objection so that I may make a brief explanation?

Mr. GORE. Certainly.

Mr. MCCARRAN. There are two such bills on the calendar, one following the other. Both have been objected to by the Senator from Arkansas [Mr. FULBRIGHT]. I think his objection has merit. The persons involved came to this country as students and now wish to remain here. I think the objection of the Senator from Arkansas is well taken. In other words, if they can come in as students and remain here, they will perhaps destroy the program. However, they could go across the line to Canada or down to Mexico and come back into the United States. I do not see any way to stop that.

I cannot criticize the objection. I think it is well taken from the standpoint of the policy of the program. However, I can see how the program might be defeated in another way.

Mr. GORE. Mr. President, those of us who serve on the Calendar Committee have no choice in the matter if a Senator requests us to object to a bill.

Mr. MCCARRAN. I understand.

Mr. GORE. I have taken the liberty of suggesting to the majority leader that in cases like this, where a policy objection is made to a particular type of bill, it would be well to remove such bill from the calendar and call it up separately.

The PRESIDING OFFICER. Does the Chair understand that the Senator from Tennessee asks that the bill go over?

Mr. GORE. I ask that the bill go over.

The PRESIDING OFFICER. Objection is heard, and the bill goes over.

BILLS PASSED OVER

The bill (S. 59) for the relief of Felix Kortschok was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. The bill goes over.

The bill (S. 152) for the relief of Fred P. Hines was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. The bill goes over.

J. DON ALEXANDER—BILL PLACED AT FOOT OF CALENDAR

The bill (S. 484) for the relief of J. Don Alexander was announced as next in order.

Mr. HENDRICKSON. Mr. President, I ask that the bill go over.

Mr. MILLIKIN. Mr. President, may I ask the distinguished Senator from New Jersey what his objection is to the bill?

Mr. HENDRICKSON. Mr. President, I did not hear the Senator from Colorado.

Mr. MILLIKIN. May I ask the Senator what his objection is to the bill?

Mr. HENDRICKSON. I wonder whether the Senator from Colorado could give an explanation of the bill.

Mr. MILLIKIN. The bill would give Mr. Alexander the right to recover a capital-gains tax, on which he was not able to request a refund within the statutory period of time, because the matter became involved in bankruptcy proceeding. After the bankruptcy proceeding had been settled and his rights more or less determined, the statute of limitations had expired, and he was unable to make a claim for a refund.

The PRESIDING OFFICER. Does the Senator from New Jersey request that the bill go over?

Mr. HENDRICKSON. I withhold my objection.

Mr. GORE. Mr. President, did the Senator from New Jersey withdraw his objection?

Mr. HENDRICKSON. No; I withheld my objection.

Mr. GORE. Mr. President, reserving the right to object, if it would be agreeable to have an amendment releasing the operation of the statute of limitations against the claim, I would not object. However, I would feel constrained to object to the passage of a bill which makes an outright payment without any adjudication of the matter. If the distinguished junior Senator from Colorado is agreeable to such an amendment, allowing the claimant to go into the Court of Claims irrespective of the statute of limitations, I would have no objection.

Mr. MILLIKIN. Mr. President, I suggest that the bill go to the foot of the calendar. I shall later suggest such an amendment, to meet the objection of the Senator from Tennessee.

The PRESIDING OFFICER. Without objection, the bill goes to the foot of the calendar.

BILLS AND RESOLUTION PASSED OVER

The bill (S. 101) for the relief of Phed Vosniacos was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. Objection is heard. The bill goes over.

The bill (S. 102) for the relief of Francesco Cracchiolo was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. The bill goes over.

BILL PASSED OVER

The bill (H. R. 739) for the relief of Alexander A. Senibaldi was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. The bill goes over.

PREVENTION OF CITIZENS OF QUESTIONABLE LOYALTY FROM ACCEPTING OFFICE OR EMPLOYMENT UNDER UNITED NATIONS—BILL PASSED OVER TO NEXT CALL OF THE CALENDAR

The bill (S. 3) to prevent citizens of the United States of questionable loyalty to the United States Government from accepting any office or employment in or under the United Nations, and for other purposes, was announced as next in order.

Mr. HENDRICKSON. Mr. President, I ask that the bill go over, at the request of the Department of Justice.

Mr. McCARRAN. Mr. President, will the Senator withhold his objection until I make an explanation of the bill?

Mr. HENDRICKSON. I gladly withhold my objection for an explanation of this bill.

Mr. McCARRAN. Mr. President, this is a bill designed to implement the recommendations of the Senate Internal Security Subcommittee. The bill seeks to guarantee by statute that only American citizens of unquestioned loyalty will be employed by the United Nations.

The bill does not impose any restrictions upon the United Nations nor does it attempt to coerce the officials of that international organization. It recognizes that there are two classes of American nationals upon which the bill may have impact: First, those who seek employment with the United Nations. The second group are those American nationals already employed by the United Nations. The bill recognizes that Congress cannot require the United Nations' administrative officials to dismiss American nationals. This bill, therefore, operates directly upon the American nationals themselves. With respect to an American national now employed by the United Nations, it merely requires the submission of certain information basic to a proper determination of the question as to whether the employee presents a loyalty or security risk. With respect to persons not presently employed by the United Nations, the bill would explicitly prohibit acceptance of such employment without first receiving security clearance from the Attorney General.

The test is to be whether the Attorney General finds evidence that there is a reasonable possibility of danger to the security of the United States by the employment of the applicant by the international organization. If he does so find, he would issue a written denial of the application for security clearance, together with a statement of his reason for such denial, and would forward that information to the United Nations or special agency thereof, so that body would have notice of the doubtful loyalty of the prospective employee. Such a

denial would not of course bar the United Nations from hiring the applicant; but it would make it unlawful for the applicant thereafter to accept a United Nations job. On the other hand, if the Attorney General should find that the applicant's employment by the United Nations would not involve reasonable possibility of danger to the security of the United States, he would give a security clearance. That is all there is to this bill.

Mr. President, there is no way except by congressional action to prohibit United States nationals who are subversives from accepting employment with the United Nations. There is no way except by congressional action to require present employees of the United Nations who are United States nationals to file registration statements designed to disclose possible subversion in that group. If Congress deems it desirable to do these things, Congress will have to do them by legislation. These are the things S. 3 is designed to do.

Mr. HENDRICKSON. Mr. President, the junior Senator from New Jersey would like to say that he is wholeheartedly in favor of the bill. He supported it in committee, and voted to report it to the Senate.

My only reason for asking that the bill go over is that a request was made by the Department of Justice to have it go over for purpose of study, until the next call of the calendar.

The PRESIDING OFFICER. The bill will go over.

Mr. McCARRAN. Mr. President, I ask unanimous consent that the bill go over to the next call of the calendar.

Mr. TAFT. Mr. President, it is my intention to bring it up tomorrow, if it is agreeable to the Senator from Nevada, after the resolution relative to the New Mexico election case, Senate resolution 106, Calendar No. 159, and the export insurance bill, are disposed of. Then I shall be glad to bring up the additional judges bill.

Mr. CLEMENTS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

The PRESIDING OFFICER. The Chair would call the attention of the Senator from Ohio to the fact that the Senate has not reached the additional judges bill. The Senate has just concluded consideration of Calendar 224, Senate bill 3, relating to the United Nations.

Mr. TAFT. I thought Calendar No. 225 had been called. I thought we had disposed of Calendar 224, Senate bill 3, because it was objected to.

The PRESIDING OFFICER. Yes; but the Senator from Nevada apparently misunderstood the Senator from Ohio.

Mr. HENDRICKSON. The Senator from Nevada requested that Calendar 224, Senate bill 3, be included in the next call of the calendar.

Mr. TAFT. I see. Certainly it will be included in the next call of the calendar.

The PRESIDING OFFICER. The clerk will call Calendar No. 225, Senate bill 15.

APPOINTMENT OF ADDITIONAL CIRCUIT AND DISTRICT JUDGES—BILL PASSED OVER

The bill (S. 15) to provide for the appointment of additional circuit and district judges, and for other purposes, was announced as next in order.

Mr. TAFT. Mr. President, I ask that the bill go over, in line with the statement I made a moment ago.

Mr. CLEMENTS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. CLEMENTS. The majority leader has suggested that three measures which, as I recall, are Calendar No. 159, Senate Resolution 6; Calendar No. 171, Senate bill 1413; and Calendar No. 225, Senate bill 15, would be taken up tomorrow. Is that correct?

Mr. TAFT. That is correct.

Mr. CLEMENTS. Am I correct in understanding that Calendar No. 153, Senate bill 16, and Calendar No. 142, Senate bill 922, would also be considered tomorrow?

Mr. TAFT. Yes; if the Senate reaches Calendar No. 153, the immunity bill, we will take it up tomorrow. The Senate will also take up Calendar No. 142, the Johnson District of Columbia transportation bill, if we have time to consider it tomorrow.

Mr. CLEMENTS. Several Members on this side of the aisle are interested in those two bills.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. KEFAUVER. In connection with Calendar No. 153, Senate bill 16, the so-called immunity bill, one of the amendments which has been suggested by the author of the bill, the distinguished Senator from Nevada [Mr. McCARRAN], I believe would take care of the question I raised.

Mr. TAFT. A number of amendments were suggested, and I thought it would be just as easy to consider the measure tomorrow. That would be as soon as we could get to it. I thought the bill would require more discussion than could be had under the 5-minute rule. The subject is one of very general controversy, and, I think, of public interest.

Mr. KEFAUVER. Very well.

PREVENTION OF INDEFINITE SERVICE OF UNITED STATES MARSHALS AFTER EXPIRATION OF TERMS OF OFFICE

The PRESIDING OFFICER. The next measure on the calendar will be stated.

The bill (S. 1608) to prevent the indefinite continuation of service of a United States marshal following the expiration of his term was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That subsection (c) of section 541 of title 28, United States Code, is hereby amended so as to read:

"(c) Each marshal shall be appointed for a term of 4 years except in the district of Hawaii where the term shall be 6 years. Unless sooner removed by the President, a

marshal shall continue, for a period of not to exceed 6 months, to perform the duties of his office after the expiration of his term unless his successor is appointed and qualifies before the expiration of that period."

BILL PASSED OVER

The bill (S. 1631) to amend section 10 of the Federal Reserve Act, and for other purposes, was announced as next in order.

Mr. GORE. Mr. President, this measure does not appear on the copy of the calendar which is before me. Therefore, I ask that the bill be passed over.

Mr. HENDRICKSON. Mr. President, does the Senator from Tennessee refer to Calendar No. 227, Senate bill 1631?

Mr. GORE. Yes.

The PRESIDING OFFICER. The Senator from Tennessee has asked that the bill be passed over, and the bill will be passed over.

ORDER OF BUSINESS

The PRESIDING OFFICER. We now come to the bills which have been placed at the foot of the calendar.

Mr. MILLIKIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 55, Senate bill 484, for the relief of J. Don Alexander.

The PRESIDING OFFICER. The Senator from Colorado has requested that Calendar No. 55, Senate bill 484, be considered at this time, out of order.

Mr. MILLIKIN. Mr. President, if consideration of the bill at this time is out of order, I am perfectly willing to wait.

The PRESIDING OFFICER. One bill comes ahead of it.

Mr. MILLIKIN. Then I am willing to wait.

The PRESIDING OFFICER. Very well.

Mr. McCARRAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada will state it.

Mr. McCARRAN. A number of bills, one of which was Senate bill 30, Calendar No. 107, were placed at the foot of the calendar. Are not they to be considered at this time, ahead of any other measures?

The PRESIDING OFFICER. The Senate is about to consider the bills which went to the foot of the calendar, and they will be taken up in their order on the calendar.

The first bill placed at the foot of the calendar will be stated.

JUDICIAL REVIEW OF DECISIONS OF GOVERNMENT CONTRACTING OFFICERS IN CERTAIN CASES—BILL PASSED OVER

The bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts, in cases other than those in which fraud is alleged, was announced as next in order.

Mr. SALTONSTALL. Mr. President, I have discussed the bill with attorneys of

the Department of Defense. I am afraid that at the present time I have to object to consideration of the bill in its present form.

I should like to ask the distinguished Senator from Nevada whether he would object to having the bill recommitted, so that the Department of Defense could perfect the language of the bill with the committee, rather than for us to try to do so on the floor.

There is some objection from contractors who do business with the Air Force, and also from the Department of Defense itself, to including the General Accounting Office under the provisions of the bill. My feeling is that the easiest way to straighten out the matter would be to recommit the bill.

However, if the Senator from Nevada objects to having that done, I must object to consideration of the bill at this time; and perhaps we could get together on the language of the bill at a later time.

Mr. McCARRAN. Mr. President, I should like to make an explanatory statement, in reply to the Senator from Massachusetts:

This bill has been held up, I am informed, at the request of the Air Force. The Air Force, I am further advised, objected to the fact that the bill gave the Comptroller General the same right that was given to a contractor to question a decision of a contracting officer on the basis that it was arbitrary, or fraudulent, or grossly erroneous.

Attorneys for the Air Force have drafted, and representatives of the Associated General Contractors have submitted to me, an amendment designed to meet the views of the Air Force. I was requested to offer this amendment as a substitute for the language of Senate bill 24, as it was reported from committee. I said I would consider doing so if the Air Force got a clearance from the Budget Bureau and took up the matter with the Comptroller General and got his approval of the proposed new language, or at least an assurance that he did not object to the proposed new language.

The reason I asked that the matter be taken up with the Comptroller General is that it appears to me that the principal objection the Air Force has to the bill is that it gives the Comptroller General the same right that a contractor has to question the decision of a contracting officer.

I was informed this morning by a representative of the Associated General Contractors that the matter had been cleared with the Budget Bureau and had been taken up with the Comptroller General, as I had suggested.

Subsequently, I discovered that while the proposed amendment had been taken up with the Budget Bureau, there had been no clearance; the position of the Budget Bureau is one of nolo contendere, so to speak. The Budget Bureau does not specifically approve this new language, but does not want to be in a position of disapproving it.

Furthermore, Mr. President, the Comptroller General has not approved this proposed new language. It has not been discussed with him. The matter

has been discussed in principle with the General Counsel of the General Accounting Office, who informed a representative of the Air Force that the Comptroller General never could approve eliminating the Comptroller General from the bill, because the Comptroller General feels that in order to protect the interests of the Government, it is necessary that he shall have as much right to question the decision of a contracting officer on the ground, for instance, of fraud or gross mistake, as may be given to the private party to the contract.

I want to make it clear that I do not mean to imply there has been any misrepresentation to me by any representative of the Air Force. As a matter of fact, officials of the Air Force gave me the information only this morning that the Budget Bureau had not cleared this proposed amendment and that the Comptroller General—to use their phrase—"has not backed off from his opposition to the amendment."

It has been represented to me—not by the Air Force—that the Air Force has threatened to oppose this bill unless it gets the amendment it has drafted. It was stated to me that the Air Force had Senators who would object to this bill on a calendar call unless the Air Force was satisfied; who would fight any motion to bring up the bill unless the Air Force was satisfied; and who would oppose the bill if it did come up in the Senate; and that if the bill ever passed both Houses of the Congress, the Air Force would get it vetoed.

I do not know how much reliance to place in those threats, Mr. President. I reiterate that they have not been made directly by any representative of the Air Force, so far as I know. I know they have been repeated to other Senators.

Under the circumstances, Mr. President, I am not going to offer the amendment the Air Force has proposed, and I shall resist it if it is offered; but I ask unanimous consent that the text of the amendment, together with a statement of position of the Associated General Contractors of America with respect to this bill, may be printed in the RECORD at this point, as a part of my remarks.

There being no objection, the text of the amendment and the statement were ordered to be printed in the RECORD, as follows:

Be it enacted, etc., That any provision of any contract entered into by the United States to the effect that the decision of the head of the department or agency of the United States concerned, or his representative, shall be final and conclusive with respect to disputes involving questions of fact arising under such contract, shall be binding except as to such decisions hereafter made which may be determined by a court of competent jurisdiction to have been arbitrary, or grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

STATEMENT OF POSITION OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA AND DEVELOPMENTS IN RE SENATE BILL 24

1. The association has no objection to Senate bill 24 as drafted.
2. Immediately following objections by Senators HUNT and BUTLER, the association received a telephone call from a representa-

tive of the Department of Defense to arrange a conference.

3. At the initial conference with the Department of Defense we were advised that Senate bill 24 in its present form would cause undue hardship to the Department, as well as to other industries, and would seriously interfere with the Department's procedure.

4. We advised the Defense Department that we had no desire to cause either the Department or any other industry any hardship, and that our primary purpose was to secure the right of judicial review so that the hardship created by the Wunderlich decision would be corrected.

5. One of the objections voiced against Senate bill 24 was that it conferred upon the Comptroller General the right to review questions of fact as well as questions of law. At present the Comptroller General's right of review is limited to questions of law.

6. The Defense Department indicated that giving the Comptroller General the right to review questions of fact would unnecessarily tie the hands of the Department and, in many instances, years would elapse before a decision could become final.

7. After many conferences, the Department of Defense submitted a proposed revision, a copy of which is attached hereto.

8. It will be noted that this draft eliminates the retroactivity objected to by the Department. It applies only to decisions made after the date of enactment. It further eliminates the right of review of questions of fact by the Comptroller General.

9. This association is primarily interested in the early enactment of legislation which will assure members of our industry the right of judicial review. The proposed revision also appears to accomplish this purpose. We are hopeful that early and favorable action may be obtained.

Mr. McCARRAN. Mr. President, I further wish to serve notice that if there is objection to the consideration of this bill on the call of the calendar, I shall at the earliest opportunity move that the Senate proceed to its consideration.

Mr. SALTONSTALL. Mr. President, what the Senator from Nevada has said will be helpful, I think, in the attempt to work out proper terminology of the bill. I am very happy that he has made his statement and has brought out the various points.

I renew my request that the bill go over at the present time.

The PRESIDING OFFICER. Objection being heard, the bill is passed over.

J. DON ALEXANDER

The PRESIDING OFFICER. The next bill placed at the foot of the calendar will be stated.

The bill (S. 484) for the relief of J. Don Alexander was announced as next in order.

Mr. MILLIKIN. Mr. President, the purpose of the bill is to ward \$16,720.41 to J. Don Alexander, of Colorado Springs. He paid that amount of tax on a capital-gains transaction. Then there was bankruptcy litigation in the course of which it developed that the property was not his. According to the court it belonged to the corporation. Therefore, he had paid the Government taxes which he was not obligated to pay; hence the claim.

The distinguished acting minority leader has suggested that, instead of making an outright award of the amount

of his overpayment, the case should be litigated judicially. I think the suggestion is a proper one, and it is acceptable.

Mr. President, I send to the desk an amendment in the nature of a substitute, offered by my colleague the senior Senator from Colorado and myself, and ask that it be read.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. It is proposed to strike out all after the enacting clause and in lieu thereof to insert:

That notwithstanding any statute of limitations or lapse of time, jurisdiction is hereby conferred upon the United States District Court for the District of Colorado to hear, determine, and render judgment on the claim of J. Don Alexander, of Colorado Springs, Colo., against the United States for recovery of income tax paid by him for the year 1929 which covered the capital net gain from the sale of 9,000 shares of stock in the Alexander Industries, Inc., which stock was later held by the United States circuit court of appeals in *Alexander v. Thelemen* (69 F. (2d) 610 (1934)) to be the property of Alexander Industries, Inc., and not of the said J. Don Alexander.

SEC. 2. Suit upon such claim may be instituted at any time within 1 year after the date of enactment of this act. Proceedings for the determination of such claim and review thereof, and payment of any judgment thereon, shall be in accordance with the provisions of law applicable to cases over which the court has jurisdiction under section 1346 (a) (1) of title 28 of the United States Code. Nothing contained in this act shall be construed as an inference of liability on the part of the United States.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The bill (S. 484), was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, notwithstanding any statute of limitations or lapse of time, jurisdiction is hereby conferred upon the United States District Court for the District of Colorado to hear, determine, and render judgment on the claim of J. Don Alexander, of Colorado Springs, Colo., against the United States for recovery of income tax paid by him for the year 1929 which covered the capital net gain from the sale of 9,000 shares of stock in the Alexander Industries, Inc., which stock was later held by the United States circuit court of appeals in *Alexander v. Thelemen* (69 F. (2d) 610 (1934)) to be the property of Alexander Industries, Inc., and not of the said J. Don Alexander.

SEC. 2. Suit upon such claim may be instituted at any time within 1 year after the date of enactment of this act. Proceedings for the determination of such claim and review thereof, and payment of any judgment thereon shall be in accordance with the provisions of law applicable to cases over which the court has jurisdiction under section 1346 (a) (1) of title 28 of the United States Code. Nothing contained in this act shall be construed as an inference of liability on the part of the United States.

The title was amended so as to read: "A bill conferring jurisdiction upon the United States District Court for the District of Colorado to hear, determine, and render judgment upon the claim of J. Don Alexander against the United States."

DR. ALEXANDRE DEMETRIO MORUZI—BILL PASSED OVER

The bill (S. 389) for the relief of Dr. Alexandre Demetrio Moruzi was announced as next in order.

The PRESIDING OFFICER. Is there objection?

Mr. GORE. Mr. President, I suggest that the bill go over for the time being. The junior Senator from Arkansas [Mr. FULBRIGHT] has not withdrawn his objection to the bill. I understand that he is in correspondence with the Department of State. Therefore, I must at this time object.

The PRESIDING OFFICER. Objection is heard, and the bill will be passed over.

JURY TRIALS IN CONDEMNATION PROCEEDINGS IN UNITED STATES DISTRICT COURTS

The Senate proceeded to consider the bill (S. 30) to provide for jury trials in condemnation proceedings in United States district courts, which was read, as follows:

Be it enacted, etc., That (a) chapter 121 of title 28 of the United States Code is amended by adding at the end thereof a new section as follows:

"§ 1875. Condemnation proceedings.

"Notwithstanding the provisions of subdivision (h) of rule 71A of the Rules of Civil Procedure, any party to an action in a district court involving the exercise of the power of eminent domain under the law of the United States may have a trial by jury of the issue of just compensation, except where a tribunal has been specially constituted by an act of Congress governing the case for the determination of that issue, by filing a demand therefor within the time allowed by such rule for answer or within such further time as the court may fix."

(b) The analysis at the beginning of such chapter is amended by adding at the end thereof the following:

"1875. Condemnation proceedings."

SEC. 2. Section 1875 of title 28 of the United States Code shall apply to (a) actions commenced after the date of enactment of this act, (b) actions pending on the date of enactment of this act in which the time for requesting a jury trial under the applicable provisions of law in effect immediately prior to August 1, 1951, had not expired prior to August 1, 1951, and (c) actions pending on the date of enactment of this act which were commenced subsequent to July 31, 1951; but the time within which a jury trial may be demanded under such section in any case referred to in clause (b) or clause (c) above shall be 30 days after the date of enactment of this act in lieu of the time prescribed in such section.

Mr. McCARRAN. Mr. President, since this bill was reached earlier on the call of the calendar, I have conferred with the senior Senator from Virginia [Mr. BYRD] who raised objection to it. I now send forward an amendment and ask for its immediate consideration and adoption.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 1, line 8, it is proposed to strike out the words "any party" and insert the words "the defendant."

Mr. McCARRAN. Mr. President, let me say that I submitted this amendment, together with the bill, to the senior Senator from Virginia [Mr. BYRD], and it was satisfactory to him.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CITATION OF RUSSELL W. DUKE FOR CONTEMPT OF THE SENATE

The resolution (S. Res. 103) citing Russell W. Duke for contempt of the Senate was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

Mr. McCARTHY. Mr. President, I believe Senators would like an explanation of Senate Resolution 103. It concerns a matter which the Senate Permanent Investigation Subcommittee has been investigating in some detail. Mr. Duke was under subpoena when he went to Canada. He was contacted by the Chief of our staff, Mr. Flanagan, and was told the date and time when he was to return to the United States, and the place at which he was to appear. Mr. Duke first said he lacked sufficient funds to come to Washington, so we sent him an airplane ticket. He then complained that he never received the ticket, so Mr. Flanagan then made arrangements for him to pick up another ticket at the airport. Mr. Duke then called back to say that he had discussed the matter with a lawyer, and that he had found that we could not extradite him in contempt proceedings, and therefore he thought he would not return to the United States. He has not returned since then. The committee met and unanimously voted to cite Mr. Duke for contempt.

If Senate Resolution 30 is agreed to today by the Senate, I shall ask unanimous consent to place in the RECORD a memorandum which the staff is preparing, and which will be ready this afternoon, giving a résumé of this particular case. It is a rather aggravated case of influence peddling, and has to do with the Internal Revenue Bureau.

To give the Senate a very quick 1-minute picture, if I may, Duke somehow was able to come into possession of information as to pending tax claims against various persons residing on the west coast. His typical method of approach was to contact the individual against whom the claim was made, or his lawyer, tell him all about the case, and give him all the confidential information he had, information which neither the individual himself nor his lawyer possessed. He would end up by taking a cut in the case. In this manner he obtained a total sum of \$30,000 plus.

However, rather than state all the details, I ask unanimous consent to place the staff memorandum in the RECORD at this point in my remarks.

The PRESIDING OFFICER. Is there objection?

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

STAFF MEMORANDUM RE RUSSELL W. DUKE

On the basis of information furnished to the Senate Permanent Subcommittee on Investigations several months ago by a reporter for the San Francisco Examiner, a joint investigation into the activities of Russell W. Duke, formerly of Portland, Oreg., was conducted by the Senate Permanent Subcommittee on Investigations and the Senate Subcommittee Investigating the Justice Department. During the course of the investigation, Mr. Duke on January 15, 1953, in secret session testified before the Senate Permanent Subcommittee on Investigations. Upon completion of our investigation, it was decided to hold open hearings. Mr. Duke was the chief witness, and as Report No. 143 of the Committee on Government Operations of the Senate which supports Senate Resolution No. 103, clearly indicates, Duke willfully refused to appear before this subcommittee in response to a subpoena. I have proposed Senate Resolution No. 103 as I feel Duke should be cited for contempt. His open defiance of the subpoena powers of the United States Senate compels me to make some of his activities a matter of record.

Investigation has revealed that Russell W. Duke about 1946 began operations as a self-styled public relations representative in connection with various tax cases that were pending in the Bureau of Internal Revenue. In one way or another, through various sources, most of which are unknown and which could not be identified, Duke would ascertain that some person on the west coast was in tax difficulty with the Bureau of Internal Revenue. In some manner, he would also obtain detailed information concerning that person's tax difficulty. Duke would then contact the taxpayer or the taxpayer's attorney, and would attempt to convince them his services should be retained so the case could be resolved to their satisfaction. In many cases, his representations to these persons that he knew prominent people in the Bureau of Internal Revenue and the Department of Justice and elsewhere, plus his intimate knowledge of their individual tax cases, would result in his being retained as public relations counsel. Duke was not an attorney nor an accountant. On occasions, however, during his first meeting with the taxpayer or the taxpayer's attorney, he would represent that he was an attorney.

One example of Duke's activities was his association with the L. De Martini Co. of San Francisco, Calif. In June of 1947, the San Francisco office of the Bureau of Internal Revenue proposed an additional assessment in its civil tax case against this corporation in the amount of \$265,001.11 for the taxable years 1944, 1945, and 1946 because the Government disputed certain salaries which had been paid to the officials of this company. The amount of this tax deficiency was established by and recommended by Frank L. Norton, who was at that time (June of 1947) an employee of the Bureau of Internal Revenue in San Francisco. Shortly thereafter, on July 15, 1947, Norton's services with the Bureau of Internal Revenue were terminated because of a reduction in force, and a few months later, he met A. S. Kayser, treasurer of the De Martini Co., at which time they discussed the tax assessment. Norton told Kayser he had a friend in Portland, Oreg., who could get the tax deficiency figure of \$265,001.11 reduced and he suggested that Kayser discuss the case with his friend, whose name Norton did not mention. Norton also told Kayser his friend would not be interested in doing anything at all unless a guaranty of good faith was put up in the sum of \$5,000. Kayser agreed to make out a certified check for \$5,000 and place same with an independent person to be held until the case was satisfactorily handled, at which time it should be delivered to Norton's friend.

Kayser, at Norton's specific request, made out this check to the order of E. Ward on

October 17, 1947, and Norton was then given the check to hold. A short time later, a meeting between Duke and Kayser was arranged by Norton at which time Duke promised Kayser introductions to the proper people in Washington, D. C., and gave Kayser assurances of proper treatment of the tax case. On behalf of the De Martini Co., Kayser retained Duke as public relations representative, agreeing to compensate "Duke and his associates" in the amount of \$65,000 provided the proposed additional tax assessment of \$265,001.11 was reduced to a maximum payment of \$100,000. There was a further understanding that if a higher tax payment was necessary, some other reasonable method of compensating Duke would be worked out.

Frank L. Norton, after he had received the aforementioned \$5,000 check, retained the same in his possession for a few months and then, upon being advised by Duke, not Kayser, that he could keep this amount as his fee, had this check cashed in the following manner: He first endorsed the name of E. Ward and then had his wife endorse the check in her maiden name of Hogan, and cash it. Norton admitted that the reason the check was made out in the name of E. Ward at his request and cashed in the above manner was because he did not want to have his name appear anywhere in the transaction.

On August 30, 1948, David Sullivan, of the San Francisco office of the Bureau of Internal Revenue who was then assigned to the De Martini case, had luncheon with Duke at the latter's invitation. At this luncheon, Duke informed Sullivan that he was "just the man we are lookin' for," and inquired if Sullivan would be interested in accepting a position and if Sullivan were so interested, he would receive a \$25,000 check on the following day and would then receive \$1,200 a month in addition thereto. Duke also told Sullivan he would see that the mortgage on Sullivan's home was paid and in response to an inquiry from Sullivan as to what action Duke would take if Sullivan rendered an adverse opinion on the De Martini case, Duke answered by saying Sullivan's wife would not make a very pretty-looking widow.

The new president of the De Martini Co. terminated Duke's services on August 31, 1948. Duke had been paid \$14,000 by the company, however, which amount was in addition to the \$5,000 retained by Frank L. Norton.

In another case, Thomas Guy Shafer, of Oakland, Calif., was under investigation by the Bureau of Internal Revenue for willfully attempting to evade taxes for the years 1944, 1945, and 1946. This was a criminal investigation and the tax deficiency was listed as \$266,907.95, with a penalty of \$70,576.21 resulting in a total of \$337,383.16. Shafer was eventually indicted, and on December 4, 1952, was tried for tax evasion for the years 1945 and 1946. The jury disagreed on the 1945 case and found him not guilty on the 1946 case.

Wallace Knox, an attorney in Oakland, Calif., who had represented Shafer previously, incorporating Shafer's drugstore business in 1946, and who was retained by Shafer to represent him in the tax case, contacted Russell W. Duke in 1948 after having been informed that Duke could assist people in tax matters. Knox, at this time, was unfamiliar with the procedure followed by attorneys in tax cases. At their first meeting, Duke told Knox he was an attorney; that he knew everyone of importance in the Bureau of Internal Revenue including the Commissioner; and that he could steer Knox to the right persons who could forcibly present Shafer's case to the proper authorities. The following day, Duke amazed Knox with his intimate knowledge of the facts of Shafer's tax case, and as a result Duke was retained as public relations representative for \$6,500. Subsequently, Shafer's case was referred by

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 9, 1953
For actions of June 8, 1953
83rd-1st, No. 104

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HIGHLIGHTS: Senate committee reported USDA appropriation bill. Senate passed farm-bankruptcy and weather-control bills. House committees reported economic controls and wheat marketing quota bills. House received conference report on 3rd supplemental appropriation bill.

SENATE

1. AGRICULTURAL APPROPRIATION BILL, 1954. The Appropriations Committee reported with amendments this bill, H.R. 5227 (S. Rept. 382) (p. 6370).

Representatives of the Department agencies and bureaus have been advised in detail of the Committee's actions. Copies of the bill as reported, committee report, and hearings will be distributed directly to the agency budget offices, as soon as received, pursuant to a distribution list that has been worked out with the Department agencies. The agencies will receive the material at the same time this office will receive it. The material will not be distributed from this office. In general, copies should be obtained through the agency and bureau budget offices rather than from this office.

At the end of this Digest are (1) a summary comparison of the Committee actions with the 1954 estimates, House figures, and total anticipated funds available in 1953, and (2) excerpts from the committee report.

2. TREASURY-POST OFFICE APPROPRIATION BILL, 1954. The Appropriations Committee reported without amendment this bill, H.R. 5174 (S. Rept. 373) (p. 6369).

3. WEATHER CONTROL. Passed as reported S. 285 (pp. 6390-2). This bill provides for a temporary Advisory Committee on Weather Control comprised of 9 members, including 5 appointed by the President with the advice and consent of the

Senate from persons in private life with outstanding ability in the fields of science, agriculture, and business, and the Secretaries of Defense, Interior, Agriculture, and Commerce, or their designees. The Committee shall make a complete study and evaluation of public and private experiments in weather control for the purpose of determining the extent to which the U. S. should experiment with, engage in, or regulate activities designed to control weather. The Committee shall have authority to secure information and statistics from Federal agencies, to hold hearings and take testimony, and to require keeping and production of records by persons undertaking weather control experiments. It shall report to Congress at the earliest possible moment on the advisability of Government regulation of activities of persons attempting to modify the weather and shall make its final report to Congress not later than June 30, 1956, 30 days after which it shall expire.

4. FARM BANKRUPTCY. Passed as reported S. 25, to amend the uniform bankruptcy law so as to provide for farmer-debtor relief thereunder (pp. 6381-7, 6402).
5. FOREIGN TRADE. Passed as reported by the Rules Committee S. Res. 25, to provide for an investigation of means of expanding foreign investments and trade (pp. 6392-3).
6. FLOOD CONTROL. Passed without amendment H.R. 4025, to authorize additional appropriations for flood control projects in the Columbia River Basin (p. 6390). This bill will now be sent to the President.
Passed with amendment S. 621, to authorize additional appropriations for the Lower San Joaquin River project (pp. 6389, 6402).
7. TRANSPORTATION. Passed with amendment H.R. 2347, to continue for 6 months after termination of the national emergency certain powers relating to priorities in transportation (p. 6392).
8. PURCHASING. Passed as reported S. 24, to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged (pp. 6375-76, 6402, 6406).
9. LAND LAWS. Agreed to Committee amendments and several McCarran amendments before passing over S. 1857, providing that no condemnation of lands by the Federal Government shall destroy, diminish, or otherwise impair water rights on lands not condemned (pp. 6387-8).
10. FARM LABOR. Discussed and passed over H.R. 3480, to extend for 3 years the period of availability of Mexican farm labor in this country (p. 6381). Sen. Knowland inserted correspondence with the Labor Department and certain agricultural and other groups in Calif. relative to negotiations between this Government and Mexico on this matter (pp. 6403-6).
11. ROADS. Received a Mich. Legislature memorial urging the Federal Government "to give every possible consideration to the general purposes of the Hearst plan for better roads" (p. 6368).
12. PRICE SUPPORTS. Received a Calif. Legislature resolution urging Congress to support corn and feed grain on a flexible basis and to authorize liquidation of surplus Government stocks thereof "at prices which the livestock industry and other potential purchasers are able to pay" (p. 6368).

83D CONGRESS
1ST SESSION

S. 24

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1953

Referred to the Committee on the Judiciary

AN ACT

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That no provision of any contract entered into by the United
- 4 States, relating to the finality or conclusiveness, in a dispute
- 5 involving a question arising under such contract, of any
- 6 decision of an administrative official, representative, or board,
- 7 shall be pleaded as limiting judicial review of any such de-
- 8 cision to cases in which fraud by such official, representative,
- 9 or board is alleged; and any such provision shall be void

1 with respect to any such decision which the General Account-
2 ing Office or a court, having jurisdiction, finds fraudulent,
3 grossly erroneous, so mistaken as necessarily to imply bad
4 faith, or not supported by reliable, probative, and substantial
5 evidence.

6 SEC. 2. No Government contract shall contain a pro-
7 vision making final on a question of law the decision of an
8 administrative official, representative, or board.

Passed the Senate June 8, 1953.

Attest:

J. MARK TRICE,

Secretary.

AN ACT

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

JUNE 9, 1953

Referred to the Committee on the Judiciary

tration domiciliary facility at Fort Logan, Colo., was announced as first in order.

Mr. HENDRICKSON. Mr. President, by request, I ask that the bill go over.

The VICE PRESIDENT. The bill will be passed over.

JUDICIAL REVIEW OF DECISIONS OF GOVERNMENT CONTRACTING OFFICERS IN OTHER THAN FRAUD CASES

The bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, was announced as next in order.

Mr. HENDRICKSON. Mr. President, by request I ask that the bill be passed over.

Mr. McCARRAN. Mr. President, will the Senator from New Jersey withhold his objection for the moment?

Mr. HENDRICKSON. I gladly withhold my objection for the senior Senator from Nevada.

Mr. McCARRAN. Mr. President, I should say that this bill has been pending on the calendar for a long while. It involves a very simple question of principle.

For years the so-called finality clause in Government contracts was construed to permit judicial review in cases of fraud or gross mistake. In the Wunderlich case in November of 1951 the Supreme Court held that this clause in a contract foreclosed judicial review of disputes with regard to questions of fact, unless the aggrieved party alleged and proved fraud with respect to the decision, on the part of the department head or contracting officer. And the Court defined fraud, as it used the word, to mean "conscious wrongdoing, an intention to cheat or be dishonest."

Thus, relief with respect to even gross mistake, so gross as to import bad faith, was denied; and the only available relief remaining was confined to cases in which it could be charged and proved that a Government official had an intention to cheat or to be dishonest. Obviously, this interpretation can operate greatly to the disadvantage of contractors, in cases where there has been a gross mistake against the interest of the contractor. It is equally true that, to the same extent, this interpretation can operate to the disadvantage of the Government in cases where there has been a gross mistake detrimental to the Government interest. The Comptroller General of the United States pointed out this danger to the Government in his testimony before the Judiciary Committee.

I was very much surprised to be told that the Air Force was opposing this bill because of the provision which it contains allowing the Comptroller General the same right to get judicial review of a decision against the interest of the Government, that a contractor would have to get judicial review of a decision against the interests of the contractor. I was still more surprised when I heard

it said that the Air Force was contending this bill would give the Comptroller General the authority to make final determinations with respect to matters of law. Of course, the bill does no such thing. In this connection, I invite the attention of the Senate to the second and third paragraphs on page 3 of the committee report, which read as follows:

The committee wishes to point out with respect to the language contained in the bill, "in the General Accounting Office or a court, having jurisdiction," that it is not intended to narrow or restrict or change in any way the present jurisdiction of the General Accounting Office, either in the course of a settlement or upon audit; that the language in question is not intended either to change the jurisdiction of the General Accounting Office or to grant any new jurisdiction, but simply to recognize the jurisdiction which the General Accounting Office already has.

It should also be pointed out that in speaking of a court "having jurisdiction" the committee intends to negative both the possibility of a construction which would give basis for a contention that this bill itself was granting a court jurisdiction to review Government contracts; and also any construction that would give a basis for a collateral attack on such contracts in a court not having direct jurisdiction of the contract itself.

Mr. President, I do not know whether there will be objection to the consideration of this bill on the calendar; but in the event there is such objection, I should like to ask the able acting majority leader if he will permit the bill to come up on motion at the conclusion of the calendar call today or at some other appropriate time in the near future. I call this matter to the attention of the acting majority leader.

Mr. President, the last time this bill was before the Senate, I placed in the RECORD a "statement of position of the Associated General Contractors" which had been furnished to me by a representative of that organization. I have had some correspondence with regard to this matter with Mr. H. E. Foreman, managing director of the Associated General Contractors. In order that the RECORD may be complete, I ask unanimous consent that this correspondence, which I now send forward, may be printed in the RECORD at this point, as a part of my remarks.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.,
Washington, D. C., May 15, 1953.

Hon. PAT McCARRAN,
United States Senator,
Senate Office Building,
Washington, D. C.

DEAR SENATOR McCARRAN: This is in reply to your letter dated May 7, 1953, acknowledging the receipt of resolutions adopted by the 34th annual convention of the Associated General Contractors of America at Miami, Fla., March 23-26, 1953.

You call attention to the resolution regarding right of judicial review and point out that the statement of position of the Associated General Contractors submitted to you on May 6 appears to be at variance with this resolution.

The resolution, as adopted at the Miami convention, is still the objective of the association. This objective includes the safeguarding of any suits now pending that were caught in the backlog of the Wunderlich

decision. However, after S. 24, as amended, had been called on the calendar three times and had been objected to three times, we believed that in the interest of cooperating with you an effort should be made to ascertain and reconcile, if possible, the objections to the legislation.

We wish to reaffirm that we are satisfied with the form of S. 24, as amended, inasmuch as this legislation does safeguard the suits now pending. In submitting to you our statement of May 6 and the revised draft, we were influenced solely by the desire to secure at the earliest possible moment legislation positively establishing the right of judicial review.

It is a matter for regret that this seeming variance has occurred and so we hasten to offer the foregoing explanation.

We wish to thank you for your continuing interest in this legislation, which is so important to our industry.

Sincerely yours,

H. E. FOREMAN,
Managing Director.

MAY 7, 1953.

Mr. H. E. FOREMAN,
Managing Director, the Associated
General Contractors of America,
Inc., Washington, D. C.

MY DEAR MR. FOREMAN: Thanks for your letter of May 1 enclosing resolutions on the subjects of (1) construction industry relationships, and (2) right of judicial review, which were adopted by the 34th annual convention of AGC at Miami, March 23-26.

With regard to the resolution concerning S. 848, I am glad to have this expression of the views of your organization, and you may be sure I shall bear them in mind if and when the bill is reported for consideration by the full Judiciary Committee from the Standing Subcommittee on Antitrust and Monopoly Legislation, where it now rests.

The resolution with regard to Right of Judicial Review is extremely interesting in view of the "Statement of Position of the Associated General Contractors" which was furnished me only yesterday by Mr. Knowles of AGC, and which I inserted in the CONGRESSIONAL RECORD during the debate yesterday on S. 24. Mr. Knowles has stated the AGC is willing to accept the amendment which he brought to me, and which I also placed in the RECORD yesterday. But this amendment seems quite at variance with the final clause of Resolution No. 7 of the AGC on "Right of Judicial Review," since it does not safeguard any suits now pending and not only does not nullify provisions in existing contracts with respect to finality of decision by a contracting officer, but on the contrary, in terms expressly affirms such contract provisions except in stated situations.

Frankly, I am a little puzzled by this whole situation. I am not sure that I know who is fooling whom, except that I am reasonably sure I am not being fooled.

Thanks again for your letter, and kindest regards.

Sincerely,

THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.,
Washington, D. C., May 1, 1953.

Hon. PAT McCARRAN,
United States Senator,
Senate Judiciary Committee,
Senate Office Building,

Washington, D. C.

DEAR SENATOR McCARRAN: This national association of 6,200 general construction contractors respectfully submits to you resolutions adopted at the association's recent annual convention as follows:

Construction industry relationships.
Right of judicial review.
These resolutions cover subjects of national importance and we hope the objec-

tives will receive your favorable consideration.

Sincerely yours,
H. E. FOREMAN,
Managing Director.

RESOLUTION NO. 6. CONSTRUCTION INDUSTRY RELATIONSHIPS

The Associated General Contractors of America, at its 34th annual convention in Miami, Fla., March 23-28, 1953, expresses its opposition to S. 848, and similar proposals for a revised Federal contract procedure, for the reasons that such legislation would cause unnecessary Government regulation of business relationships in the construction industry, and would tend to increase the cost of public works construction.

The association continues to offer its cooperation to solve within the industry such problems of the relationships of general contractors with other segments of the industry as may arise.

Mr. McCARRAN. Mr. President, again I draw to the attention of the acting majority leader the question of whether at a convenient time in the near future we can have this bill brought before the Senate for consideration.

Mr. KNOWLAND. Mr. President, if the Senator from Nevada will yield, let me say to him that it is my view that in the very near future, within the next few days, and certainly this week, I would anticipate, we will be able to have the bill brought before the Senate on motion, if it is not passed during the call of the calendar.

Mr. McCARRAN. I am very grateful to the Senator from California.

Mr. HENDRICKSON subsequently said: Mr. President, I wish to take this opportunity to commend the distinguished Senator from Nevada for the able statement he has made on Senate bill 24, Calendar No. 21. It was my privilege and distinct pleasure to preside over some of the hearings relating to the bill.

I desire to say that enactment of the bill is really needed. The bill is constructive, and I regret that it has not been passed before now.

I am wholeheartedly in favor of enactment of the bill. The objection I entered to its consideration during the call of the calendar today was entered only because of the request of a very distinguished colleague.

I join the distinguished Senator from Nevada in the hope that the majority leader will make this measure the order of business at a very early date.

The VICE PRESIDENT. Objection being heard, the bill will be passed over.

ERICH ANTON HELFERT AND FELIX KORTSCHOK — BILLS PASSED OVER

The bill (S. 56) for the relief of Erich Anton Helfert was announced as next in order.

Mr. GORE. Mr. President, let the bill go over.

Mr. McCARRAN. Mr. President, will the Senator from Tennessee withhold his objection until I can make a statement on the bill?

Mr. GORE. Yes, Mr. President.

Mr. McCARRAN. Mr. President, this bill and the next bill (S. 59)—Calendars 48 and 49—are private immigration bills

which have been held up because the proposed beneficiaries came to the United States as exchange students, and certain Senators feel that the purpose of the exchange student program will be frustrated if such students are permitted to remain as permanent residents.

I have suggested an amendment of these bills, so as to provide for repayment to the United States of any sums received by the beneficiaries under the student exchange program. I believe this is an equitable amendment, and should serve to satisfy Senators who feel that by the enactment of a bill such as one of these, the exchange student program, or the so-called Fulbright program, would be circumvented.

I do not know whether my announced intention to offer this amendment will make it possible to have these bills considered on the calendar; but, if not, it would be my purpose to move to proceed to consideration of the bills in regular order. It might be that these bills will be defeated by the Senate, but I believe they should be considered and disposed of. The Senate itself should speak with regard to this matter; the bills should not be stymied merely by objection on the call of the calendar.

I therefore ask the able acting majority leader, if he is on the floor, if he will be willing to agree to permit these bills to be called up on motion at an appropriate time in the near future.

Mr. JOHNSON of Texas. Mr. President, in the temporary absence of the acting majority leader, let me say to the Senator from Nevada that I shall be glad to confer with the acting majority leader regarding the matter mentioned by the Senator from Nevada.

Mr. McCARRAN. I thank the Senator.

Mr. President, I ask that the identical amendments I have suggested to Senate bill 56 and Senate bill 59 be printed and lie on the table.

The VICE PRESIDENT. The amendments will be received, printed, and will lie on the table.

Mr. GORE. Mr. President, I renew my objection.

The VICE PRESIDENT. Objection being heard, the bill will be passed over.

The bill (S. 59) for the relief of Felix Kortschok was announced as next in order.

Mr. SMATHERS. Let the bill go over.

Mr. McCARRAN. Mr. President, if the objection may be withheld for a moment, let me say that this bill is on all fours with the preceding bill. Another exchange student is involved in this instance. I intend to offer an amendment similar to the amendment which I stated with respect to the previous bill. The amendment is designed to require repayment by this boy of all moneys advanced in his behalf in connection with the student-exchange program.

The VICE PRESIDENT. Objection being heard, the bill will be passed over.

BILLS AND RESOLUTION PASSED OVER

The bill (S. 152) for the relief of Fred P. Hines was announced as next in order.

Mr. GORE. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

The bill (S. 101) for the relief of Phed Vosniacos was announced as next in order.

Mr. GORE. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

The bill (S. 102) for the relief of Francesco Cracchiolo was announced as next in order.

Mr. SMATHERS. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

The bill (S. 153) for the relief of Wilhelm Engelbert was announced as next in order.

Mr. GORE. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

The resolution (S. Res. 57) to amend rule XIII of the standing rules relative to motions to reconsider was announced as next in order.

Mr. HENDRICKSON. Mr. President, by request, I ask that the resolution be passed over.

The VICE PRESIDENT. The resolution will be passed over.

The bill (S. 389) for the relief of Dr. Alexandre Demetrio Moruzi was announced as next in order.

Mr. GORE. Let the bill go over.

The VICE PRESIDENT. The bill will be passed over.

CHE KIL BOK

The bill (S. 486) for the relief of Che Kil Bok was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Che Kil Bok, shall be held and considered to be the natural-born alien child of Lt. Col. and Mrs. Ray A. Donaldson, citizens of the United States.

TERMINATION OF RAILROAD REORGANIZATION PROCEEDINGS—BILL PASSED OVER

The bill (S. 978) to amend the Interstate Commerce Act in order to expedite and facilitate the termination of railroad reorganization proceedings under section 77 of the Bankruptcy Act and to require the Interstate Commerce Commission to consider in stock modification plans, the assets of controlled or controlling stockholders, and for other purposes, was announced as next in order.

Mr. HENDRICKSON. Mr. President, by request, I ask that the bill go over.

Mr. JOHNSON of Texas. Mr. President, will the Senator from New Jersey withhold the objection? I have a clarifying amendment which I should like to offer to the bill.

Mr. HENDRICKSON. I am glad to withhold the objection.

Mr. JOHNSON of Texas. Mr. President, I wish to offer a clarifying amendment to the bill (S. 978), which has been on the table since May 18, 1953. I submitted this amendment to the chairman of the Interstate and Foreign Commerce Committee, the junior Senator from New Hampshire [Mr. TOBEY], who advised

the patient appears to be no longer in need of rehabilitation, or has received maximum benefits, they shall give notice to the judge of the committing court, and the said patient shall be delivered to the said court, for such further action as the court may deem necessary and proper under the provisions of this act.

(b) The court, upon petition of the patient after confinement for 1 year, shall inquire into the refusal or failure of the head of the hospital to release him. If the court finds that the patient is no longer in need of care, treatment, guidance, or rehabilitation, or has received maximum benefits, it shall order the patient released, in accordance with the provisions of section 11 of this act.

PERIODIC EXAMINATION OF RELEASED PATIENTS

SEC. 11. For the 2 years after his release, the patient shall report to the Commissioners of the District of Columbia, or their designated agent, at such times and places as those officers, or officer, require, but not more frequently than once each month, for a physical examination to determine whether the patient has again become a drug user. If the Commissioners of the District of Columbia, or their designated agent, determine that the person examined is a drug user, they shall so notify the United States attorney for the District of Columbia who may then file a statement under section 3 of this act with respect to the person examined.

PATIENT NOT DEEMED A CRIMINAL

SEC. 12. The patient in any proceeding under this act shall not be deemed a criminal and the commitment of any such patient shall not be deemed a conviction.

SEC. 13. This act shall become effective 6 months after the date of its approval.

MR. HENDRICKSON. Mr. President, because this is an excellent bill, I think we should have an explanation of it for the RECORD.

MR. BEALL. Mr. President, the purpose of this proposed legislation, which affects solely the District of Columbia, is to provide for the compulsory treatment of drug users in a manner similar to the treatment provided for alcoholics. It is unfortunate that while the courts have authority to commit to jail persons convicted under the antinarcotic laws, they do not have the authority to order them confined in hospitals where they may be treated and rehabilitated. The thought is that if we can do away with potential customers for narcotics, it will be one way of cooperating with the authorities toward abolishing narcotics from the District of Columbia. The bill has already passed the House.

MR. HENDRICKSON. Mr. President, will the Senator yield?

MR. BEALL. I yield.

MR. HENDRICKSON. Having had the privilege of serving on the Committee of the District of Columbia, I wish to ask the Senator whether hospital facilities are now available in the District?

MR. BEALL. I am glad the Senator has asked that question. Sufficient hospital facilities are not available in the District of Columbia, but there are 2 very good Government institutions, 1 at Louisville, and another in Texas. I do not recall the name of the city in Texas.

There is another bill which has been approved, and which will be submitted to the Senate later, providing that, in case beds are not available in the District of Columbia, the prisoners may be committed to the Government hospitals either in Louisville or in Texas.

THE PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

THE PRESIDING OFFICER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

MR. BEALL. Mr. President, I now desire to have H. R. 3307 which has passed the House substituted for the Senate bill. It is the same as the bill the Senate has just passed.

MR. CASE. Mr. President, I believe there is a minor amendment in the bill as passed by the Senate.

MR. BEALL. I believe the House bill conforms to the Senate bill.

MR. CASE. Mr. President, I have just been reminded that in the House bill, which is sought to be substituted, the language of the Senate bill is used. Therefore, I believe that meets the point I had in mind.

MR. BEALL. Mr. President, I now ask unanimous consent that the Committee on the District of Columbia be discharged from the further consideration of H. R. 3307, and that the Senate proceed to its consideration.

THE PRESIDING OFFICER. Is there objection? The Chair hears none; the Committee is discharged from its further consideration, and the Chair lays the bill before the Senate.

The Senate proceeded to consider the bill.

MR. BEALL. Mr. President, I move that all after the enacting clause of the bill be stricken out, and that there be inserted the language of Senate bill 755, as amended.

The motion was agreed to.

THE PRESIDING OFFICER. The question now is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H. R. 3307) was read the third time and passed.

THE PRESIDING OFFICER. Without objection, the vote by which Senate bill 755 was passed is reconsidered, and the bill is indefinitely postponed.

CHARTER OF WASHINGTON GAS LIGHT CO.

The bill (S. 2032) to modernize the charter of the Washington Gas Light Co., and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That section 3 of an act entitled "An act to incorporate the Washington Gas Light Co.," approved July 8, 1848 (9 Stat. 722), as amended, is hereby amended to read as follows:

"SEC. 3. That the stock, property, and affairs of the said corporation shall be managed and conducted by or under the direction of seven directors, being stockholders, or such other number, not more than 15 nor less than 7, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine; that the said directors

shall hold their offices for 1 year, or until their successors shall be elected and shall qualify; and shall be elected at a meeting of the stockholders to be held each year at such time and place in the city of Washington as may be fixed from time to time by the stockholders of the corporation; and that notice of such annual meeting shall be given as provided in the bylaws of said corporation and shall be published in at least two of the public newspapers printed in the city of Washington, at least 14 days previous to the time of holding such annual meeting; and every such election shall be by ballot and by such of the stockholders entitled to vote who shall attend the annual meeting for that purpose either in person or by proxy; and each stockholder shall be entitled to one vote for each share of the stock held of record on the books of the corporation on the record date fixed as provided in the bylaws; and the persons having the greatest number of votes shall be the directors; and if it shall happen that two or more persons have an equal number of votes, the directors in office at the time of such election shall, by a plurality of votes, given by ballot, determine which of the persons so having an equal number of votes shall be director or directors, so as to complete the whole number to be chosen; and the directors so chosen shall, as soon as may be thereafter, proceed by ballot to elect one of their number president; and whenever any vacancy shall happen, the same shall be filled up by the remaining directors, by a plurality of votes, until the next annual meeting."

SEC. 2. There be added to said act to incorporate the Washington Gas Light Co., as aforesaid, a new section to read as follows:

"SEC. . The shares of the corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary, and sealed with the seal of the corporation. Such seal may be a facsimile. Where such a certificate is countersigned by a transfer agent other than the corporation itself or an employee of the corporation, or by a transfer clerk and registered by a registrar, the signatures of the president or vice president and the secretary or assistant secretary upon such certificate may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue."

SEC. 3. That section 1 of an act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1908, and for other purposes," approved March 2, 1907 (34 Stat. 1119, 1133, ch. 2510) (D. C. Code, sec. 43-1206), be amended by deleting from the caption "Electrical Department" the proviso appearing in the paragraph designated "Lighting" and reading as follows: "Provided, That any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the first day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31 next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manu-

factured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all byproducts, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public-utility corporations, in the District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31 next preceding the date of such report."

SEC. 4. That section 6 of an act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916 (39 Stat. 676, 716, ch. 433) (D. C. Code, sec. 43-1207), is hereby repealed.

SEC. 5. All charters, statutes, acts and parts of acts, laws, ordinances, and regulations inconsistent with or repugnant to the provisions of this act, but only so far as inconsistent herewith or repugnant hereto, are hereby repealed.

SEC. 6. The right to alter, amend, or repeal this act is hereby expressly reserved to the Congress.

SOLICITATION OF ACCIDENT AND HEALTH INSURANCE IN THE DISTRICT OF COLUMBIA

The bill (S. 1839) to amend section 32 of the Fire and Casualty Act so as to provide that an agent or solicitor may secure a license to solicit accident and health insurance in the District of Columbia under that act without taking the prescribed examination if he is licensed under the Life Insurance Act was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That section 32 of the Fire and Casualty Act, as amended (D. C. Code, sec. 35-1336), is amended by inserting immediately after "prior to the effective date of this act," the following new sentence: "The examination requirement shall be waived in the case of any applicant for a license under this section who holds a license under section 26 of the Life Insurance Act (D. C. Code, sec. 35-125), if the company desiring the appointment of such applicant certifies in writing to the Superintendent that such applicant will solicit only accident and health insurance on its behalf."

BILLS PASSED OVER

The bill (S. 1691) to authorize Potomac Electric Power Co. to construct, maintain, and operate in the District of Columbia, and to cross Kenilworth Avenue NE, in said District, with certain railroad tracks and related facilities, and for other purposes, was announced as next in order.

Mr. HENDRICKSON. Mr. President, by request, I ask that the bill go over.

The PRESIDING OFFICER. The bill will go over.

The bill (H. R. 3087) to authorize the Board of Commissioners of the District of Columbia to permit certain improve-

ments to two business properties situated in the District of Columbia was announced as next in order.

Mr. GORE. Over.

The PRESIDING OFFICER. The bill will go over.

That completes the regular call of the calendar.

The clerk will now state the bills placed at the foot of the calendar.

FARMER-DEBTOR RELIEF UNDER BANKRUPTCY ACT

The Senate resumed consideration of the bill (S. 25) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto.

The PRESIDING OFFICER. The committee amendments have heretofore been agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

ADDITIONAL APPROPRIATIONS FOR THE LOWER SAN JOAQUIN RIVER PROJECT

The Senate proceeded to consider the bill (S. 621) to authorize additional appropriations for the Lower San Joaquin River project which had been reported from the Committee on Public Works with an amendment in line 4, after the word "of", to strike out "\$10,000,000" and insert "\$8,000,000", so as to make the bill read:

Be it enacted, etc., That, in addition to previous authorizations, there is hereby authorized to be appropriated the sum of \$8,000,000 for the prosecution of the plan of improvement approved in the act of December 22, 1944, for the Lower San Joaquin River and tributaries, including the Tuolumne and Stanislaus Rivers, with such modifications thereof as in the discretion of the Chief of Engineers may be advisable.

Mr. KUCHEL. Mr. President, I am happy to inform the Senate that the distinguished Senator from Utah [Mr. WATKINS] has perused the bill and finds no objection to it. I ask that the bill be passed.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The PRESIDING OFFICER. That completes the call of the calendar.

JUDICIAL REVIEW OF CERTAIN DECISIONS OF GOVERNMENT CONTRACTING OFFICERS

Mr. KNOWLAND. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 21, Senate bill 24.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and insert:

That no provision of any contract entered into by the United States, relating to the finality or conclusiveness, in a dispute involving a question arising under such contract, of any decision of an administrative official, representative, or board, shall be pleaded as limiting judicial review of any such decision to cases in which fraud by such official, representative, or board is alleged; and any such provision shall be void with respect to any such decision which the General Accounting Office or a court, having jurisdiction, finds fraudulent, grossly erroneous, so mistaken as necessarily to imply bad faith, or not supported by reliable, probative, and substantial evidence.

SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of an administrative official, representative, or board.

Mr. KNOWLAND. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BRICKER in the chair). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KNOWLAND. Mr. President, I ask unanimous consent that the order for a quorum call be rescinded and that further proceedings under the call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. KNOWLAND. Mr. President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. BRICKER in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF A COMMITTEE

The following favorable reports of nominations were submitted:

By Mr. MILLIKIN, from the Committee on Finance:

Nelson Aldrich Rockefeller, of New York, to be Under Secretary of Health, Education, and Welfare;

James P. Winne, of Hawaii, to be collector of customs for customs collection district

United States, compared to those applied to the laborers for the same tasks in the Western and Middle Western States, has frequently caused a strong resistance on the part of the braceros to lend their services in those entities first mentioned, the workers preferring to be contracted for the West.

"4. In view of the foregoing, and based on the statistical data and salary graphs of the wages received in the year 1952 by the Mexican contract laborers compared to the averages of the prevailing wages in those regions where American laborers are employed, for the same agricultural tasks, the Government of Mexico has arrived at the following conclusions:

"First. Every request from employers who wish to engage Mexican workers must be refused when they offer salaries lower than the minimum initial rates of \$2.75 for the first hand picking of 100 pounds of cotton, the minimum wage rates being proportionately adjusted for picking under different conditions, as well as for other types of agricultural labors; and

"Second. That, as a general rule, it is proper to establish for all agricultural regions which employ Mexican laborers an increase of the hourly wage, fixing an initial minimum of not less than \$0.65 for the States of the Southeast, of \$0.75 for the Middle West, and of \$0.80 for the Western States.

"MEXICO, D. F., May 8, 1953."

In commenting upon this note this morning, Calderon stated he hoped Department of Labor would act immediately. He would not say when Mexican representatives would be ordered enforce provisions note.

WHITE.

APRIL 23, 1953.

The honorable the SECRETARY OF STATE,
Washington, D. C.

DEAR MR. SECRETARY: The Mexican Government has recently taken certain unilateral actions in connection with the operation of the Mexican migratory labor program which are clearly in violation of the Migrant Labor Agreement of 1951, as amended. In order to assure that we are not faced with a situation which may jeopardize our ability to obtain an adequate supply of agricultural workers, a large number of which will be needed within a short period, I believe that a protest should be promptly lodged with the Mexican Government to indicate the seriousness with which we view its actions. The first of these problems deals with the action of the Mexican Government in closing the migratory station at Monterrey.

As you know, during the conference between the United States and Mexico which resulted in the negotiation of the Migrant Labor Agreement of 1951, protracted discussions were held with respect to where the migratory stations in Mexico were to be located. The experience of the United States in operating under a previous agreement, which provided that Mexico had the right to determine freely where the recruitment stations were to be operated, clearly demonstrated the imperativeness of specifying in the agreement the exact locale of the various recruitment stations.

The present locations, agreed upon after considerable debate, represent a compromise between the diverse positions initially taken by both Governments. The United States initially insisted that all recruitment be at stations relatively near the United States-Mexican border, while Mexico's initial position was that all recruitment should be at stations located deep in the interior of Mexico. The five stations ultimately agreed upon and specified in article 4 of the current Migrant Labor Agreement are Monterrey, Nuevo Leon; Chihuahua, Chihuahua; Irapuato, Guanajuato; Guadalajara, Jalisco; and Durango, Durango.

Under the provisions of article 4 there is a clear and specific obligation assumed by the Government of Mexico to establish and maintain a migratory station at Monterrey, Nuevo Leon. Notwithstanding this obligation undertaken by Mexico as a matter of international agreement, the Government of Mexico, in derogation of this contractual obligation and in clear violation of article 4 of the Migrant Labor Agreement of 1951, as amended, by unilateral action in August 1952 closed the migratory station at Monterrey and has to the present date refused to honor its commitment to maintain a migratory station at this point.

We are fully cognizant of the reasons given by the Mexican Government for its refusal to comply with its obligation under article 4. Aside from the questionable validity of some of the reasons advanced by Mexico for its action, I believe it is pertinent to point out that these same arguments were advanced by Mexico during the 1951 negotiations prior to the time that Mexico consented to establish the migratory station at Monterrey. The principal arguments presented by Mexico for closing this migratory station are that (1) those who are not selected for recruitment at this point, because of its proximity to the border, proceed to enter the United States illegally, and (2) the influx of thousands of agricultural workers into Monterrey creates a very serious community problem.

In these connections it might be pointed out that the closing of the migratory station at Monterrey in 1952 in no sense diminished the number of illegal entrants into the United States. In fact, there is a strong basis for the conclusion that it may have aggravated the situation. Official figures of the United States Immigration and Naturalization Service show that for the fiscal year 1952, 703,778 illegal entrants were returned to Mexico and for the first 9 months of the fiscal year 1953 the figure is approximately 600,000, reflecting a substantial proportionate increase for the fiscal year 1953 with approximately 41 percent apprehended in the lower Rio Grande Valley of Texas.

If the closing of the migratory station at Monterrey was actuated by the desire of the Mexican Government to eliminate the community problem created by the influx of agricultural workers into the city, this action has not achieved its objective. According to information received from our representatives at Monterrey, from 10,000 to 15,000 agricultural workers have congregated at Monterrey and are remaining there in the hope that the migratory station will be opened. Many of these workers have been there for months without funds, without adequate food and shelter, and are at present presenting a very serious problem to the authorities. The reestablishment of a migratory station at Monterrey would obviously result in the removal of many of these workers from this area.

It is thus apparent that the closing of the station at Monterrey has not alleviated either of the situations which Mexico gives as its reasons for not honoring its obligations under article 4 of the Migrant Labor Agreement of 1951, as amended.

I am, accordingly, requesting that the Secretary of State through the American Embassy at Mexico City lodge a firm protest with the Mexican Government for its refusal to carry out its obligation under the Migrant Labor Agreement of 1951, as amended, to maintain a migratory station at Monterrey.

The second very serious matter which has been brought to my attention is a declaration of the Mexican Government, in open meeting during the recent conversations held in Mexico City between representatives of this Government and Mexico, that effective May 1, 1953, Mexico will demand, as a condition precedent to the contracting of

Mexican workers for employment in the United States, a general 10 percent increase in beginning wages. While the Mexican Government has not confirmed this by note, the United States representatives were advised that this demand was being presented at the request of the Secretary of the Mexican Ministry for Foreign Relations.

The determination of prevailing agricultural wages in this country for the purposes of the Migrant Labor Agreement of 1951, as amended, is, by the express language of article 15 of that agreement, the responsibility of the Secretary of Labor of the United States. Previous efforts of the Mexican officials to refuse to permit the contracting of Mexican workers, except at wage rates set by them, have been vigorously protested by this Government and in June 1952 necessitated taking the issue to the then Secretary of the Mexican Ministry for Foreign Relations, Senor Manuel Tello. As a result of these conversations, a clear understanding was reached with Mexico that the determination of prevailing and beginning wages is, under the Migrant Labor Agreement, the responsibility of the Secretary of Labor of the United States and not of the Mexican Government, and that Mexico would not undertake to fix either prevailing or beginning wages in this country.

The recent demand of the Mexican Government for a 10 percent increase in wages for Mexican nationals contracted for agricultural employment in this country is a repudiation by Mexico of the agreement reached in June 1952 with Senor Tello and is without any authority under the Migrant Labor Agreement of 1951, as amended.

I would appreciate it, therefore, if you would also file a vigorous protest with the Mexican Government advising it that this Government views its demand for a 10 percent general increase in beginning wages for Mexican nationals contracted for agricultural employment in the United States as a serious violation of the Migrant Labor Agreement of 1951, as amended.

There is also a third matter which I believe should be taken care of at this time. I would appreciate your replying to note No. 132647 dated September 24, 1952, from the Ministry for Foreign Relations of the Republic of Mexico which sets forth its interpretation of article 27 of the Migrant Labor Agreement.

In view of the arrangements pending at that time for the discussion of joint interpretations, no reply was dispatched to the note of the Mexican Ministry. Between the dates of March 23, 1953, and April 9, 1953, discussions were held in Mexico City between representatives of this Department and the Mexican Government relative to the preparation of joint interpretations, including the interpretation of article 27. A proposed joint interpretation of article 27 was submitted to the Mexican Government at that time. No final agreement, however, was reached on this article in these discussions and the matter was left unresolved. I request, therefore, that you submit the following text as our proposal for a joint interpretation of article 27:

"Prior to any transfer of workers from one employer to another under the provisions of article 27, the appropriate Mexican Consul will be given 10 days' notice of the proposed transfer, the name of the employer, and the area to which the workers are to be transferred. To the extent possible, all information and documentation required to be furnished by the new employer as a condition of contracting Mexican nationals will be submitted to the Mexican Consul before the date set for recontracting and transfer.

"The Mexican Consul will, as promptly as possible, indicate to the representative of the Secretary of Labor, whether or not he has

any objections to the transfer. If he has objections, he will indicate the respects in which he objects in order that appropriate steps may be taken to remove the objections, if possible.

"The Mexican Government will in all cases arrange for a representative of its government to be present at the place of recontracting and transfer when the recontracting is carried out. No contracts will be executed for the transfer of workers and no workers will be transferred to new employers without the consent and supervision of the appropriate Mexican Consul or the authorized representative of the Mexican Government.

"Nothing contained in this interpretation shall be construed to modify the requirements to adhere to the procedures provided in articles 7 and 8 of the Migrant Labor Agreement of 1951, as amended."

We are firmly of the opinion that this proposal would afford the Mexican Government every reasonable opportunity to protect the interests of its nationals and to exercise its prerogative to recall any Mexican workers whom it did not want recontracted.

Yours very truly,

Secretary of Labor.

NATIONAL AGRICULTURAL WORKERS UNION,
El Centro, Calif., May 4, 1953.

Mr. ANTHONY FIGUEROA,
*United States Bureau of Employment
Security, El Centro, Calif.*

DEAR MR. FIGUEROA: In our telephone conversation of this morning I advised you that a number of Mexican contract nationals have joined this union; that they are regular dues-paying members in good standing; and that we consider that by the act of joining the union these workers have elected to designate the union as their representative.

My interpretation of article 21 of the International Executive Agreement is that the Mexican nationals have the right to join the union; that we have a right to represent them vis-a-vis the employer for direct discussion and settlement of grievances; and that the employer is bound to recognize the union as the representative of the nationals.

The position which I understood you to take is that we may not represent the Nationals directly before the employer, but only through the Department of Labor and the Mexican consul.

I expressed to you my complete disagreement with your view and we agreed that I would immediately submit in writing the substance of our fundamental divergence. It is my understanding that you will consult the policymaking officials of your agency and request a clarification of the matter.

We would be very interested to receive the views of the Department of Labor in this connection at the earliest possible date.

Sincerely yours,

ERNESTO GALARZA.

CALIFORNIA FARM LABOR ASSOCIATION,
Los Angeles, Calif., May 11, 1953.

To All Members:

We have just received reliable information that Mexico, because of extreme pressure from the United States Department of Labor, has reluctantly agreed that article 21, of the international agreement will be interpreted to mean that Mexican national agricultural workers can be represented by anyone, including American unions.

We have been given to understand that Mexico opposed having their workers represented by American unions and suggested that the representatives be either from their own group or from a Mexican union. However, because of the pressure (and we are

wondering what new concession has been made) Mexico agreed to the interpretation as desired by the Department of Labor. Instructions have not, as yet, gone out to the field, but union activity is already underway to secure workers' petitions naming a union organizer as their representative.

We request that you wire your Congressman, as well as your Senators, urging them to take immediate action to restore the wording of article 21 so as to restrict representation to a member of their own group. Ask them to check with Congressman JOHN PHILLIPS (California) regarding concerted action on this important matter.

This latest action on the part of the union-minded Department of Labor is just another reason why the Farm Placement Service must be transferred to the Department of Agriculture without delay.

This matter is urgent—get your wires off today.

*ELLIS S. COMAN,
Secretary-Treasurer.*

MAJOR DISTRIBUTING CO.,
Salinas, Calif., May 12, 1953.

Senator WILLIAM KNOWLAND,
*Senate Office Building,
Washington, D. C.*

DEAR SENATOR KNOWLAND: We have just received reliable information that Mexico, because of extreme pressure from the United States Department of Labor, has reluctantly agreed that article 21 of the International Agreement will be interpreted to mean that Mexican national agricultural workers can be represented by anyone, including American unions.

We have been given to understand that Mexico opposed having their workers represented by American unions and suggested that the representatives be either from their own group or from a Mexican union. However, because of the pressure (and we are wondering what new concession has been made) Mexico agreed to the interpretation as desired by the Department of Labor. Instructions have not, as yet, gone out to the field, but union activity is already underway to secure workers' petitions naming a union organizer as their representative.

We urge you to take immediate action to restore the wording of article 21 so as to restrict representation to a member of their own group. I believe that Congressman JOHN PHILLIPS is spearheading concerted action on this important matter.

Yours very truly,

S. V. CHRISTIERNSEN.

LOS ANGELES CALIF., May 15, 1953.

Senator WILLIAM F. KNOWLAND,
*Senate Office Building,
Washington, D. C.*

Re article 21 of labor agreement, understand Mashburn states no amendment agreed on. Such statement is smokescreen as present negotiations in Mexico are not to amend agreement but to agree on interpretation of existing articles. Labor Department officials intend to force unionization on now unorganized farm workers. On February 11 this year Durkin stated, "In administering the farm labor program the Department of Labor will not inject itself into labor-management relations." Apparently someone has forgotten who someone said. Application of desired interpretation permitting American unions represent Mexican contract workers will result in end of Mexican supplemental supply program. This is serious situation and official doubletalk should be carefully analyzed.

Regards,

*WILLIAM H. TOLBERT,
Chairman, National Farm Labor Users
Committee, Santa Paula, Calif.*

JUDICIAL REVIEW OF CERTAIN DECISIONS OF GOVERNMENT CONTRACTING OFFICERS

The Senate resumed the consideration of the bill (S. 24) to permit judicial review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged.

MR. McCARRAN. Mr. President, the Supreme Court on November 26, 1951, handed down a decision which has had a great impact upon the contractors of the United States. It was a decision which shocked many lawyers and others who dislike the concept of completely closing all avenues of judicial review with respect to any class of administrative decisions.

I refer to the decision in the case of United States against Wunderlich, and others.

What this decision held, in essence, was that in any case of dispute over a matter of fact in connection with a Government contract, the decision of the contracting officer or the department head must stand, in the absence of fraudulent conduct; and the Court says that in order to claim fraud a plaintiff must allege and prove "conscious wrongdoing, an intent to cheat or be dishonest," on the part of the Government contracting officer.

As Mr. Justice Douglas pointed out in his dissent, this decision necessarily has "wide application and a devastating effect." It amounts to giving the contracting officer absolute authority to determine facts relating to execution of the contract. It would operate in almost every case to prohibit any review of a dispute by the courts, for it would be a practical impossibility to allege and prove fraud upon the part of the Government, in the term stated by the Supreme Court.

Mr. President, I particularly invite the attention of the Senate to the following:

Mr. Justice Minton, who wrote this opinion, stated in the course of it that "if the standard of fraud that we adhere to is too limited, that is a matter for Congress."

It is, indeed, a matter for Congress, Mr. President; and Congress should deal with it by passing this bill.

The PRESIDING OFFICER (Mr. MARTIN in the chair). The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes."

83^D CONGRESS
2^D SESSION

H. R. 6946

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1954

Mr. WILLIS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That no provision of any contract entered into by the United
4 States, relating to the finality or conclusiveness, in a dispute
5 involving a question arising under such contract, of any deci-
6 sion of an administrative official, representative, or board,
7 shall be pleaded as limiting judicial review of any such deci-
8 sion to cases in which fraud by such official, representative,
9 or board is alleged; and any such provision shall be void with

1 respect to any such decision which a court, having jurisdic-
2 tion, finds fraudulent, grossly erroneous, so mistaken as nec-
3 essarily to imply bad faith, or not supported by reliable,
4 probative, and substantial evidence.

5 SEC. 2. No Government contract shall contain a provi-
6 sion making final on a question of law the decision of an
7 administrative official, representative, or board.

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

By Mr. WILLIS

JANUARY 6, 1954

Referred to the Committee on the Judiciary

Digest of CONGRESSIONAL PROCEEDINGS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued March 5, 1954
For actions of March 4, 1954
83rd-2nd, No. 41

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HIGHLIGHTS:	House passed State, Justice, Commerce appropriation bill, agreeing to increase for forest highways. House completed congressional action on Mexican farm labor measure. House and Senate completed congressional action on 2nd supplemental appropriation bill. House committees reported bill to reduce excise taxes and road authorization bill. Senate committee reported wool price supports bill. Rep. Cooley introduced bill to improve marketing facilities for perishables. Rep. Poage spoke in favor of 90% price supports. Sen. Humphrey criticized reduction in dairy price supports. Sens. Ellender and Humphrey claimed Secretary submitted misleading figures on price-support costs; Sen. Aiken defended Secretary on this. Sen. Gillette inserted and discussed correspondence with USDA and other agencies on distributing surplus food to aged and needy.	Reports.....	12	Water resources.....	28
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HOUSE

1. APPROPRIATIONS. Continued debate on H. R. 8067, the State, Justice, Commerce appropriation bill for 1955 (pp. 2538-64). Agreed to an amendment by Rep. Coon to increase by \$5,000,000 the amount for forest highways (pp. 2538-43). Agreed to an amendment by Rep. Sullivan to provide \$10,000 which shall be used to "renew the compilation of statistics on stocks of coffee on hand" (pp. 2543-4).
2. FARM LABOR. Concurred in the Senate amendment to H. J. Res. 355, to continue the Mexican farm labor program in the absence of an agreement with Mexico (p. 2564). This measure will now be sent to the President.
3. ROAD AUTHORIZATIONS. The Public Works Committee reported without amendment H. R. 8127, to authorize appropriations for roads, including forest highways and forest roads and trails (H. Rept. 1308)(p. 2580).
4. PRICE SUPPORTS. Rep. Poage spoke in favor of continuation of the support of storable commodities at 90% of parity (pp. 2577-8).
5. TAXATION. The Ways and Means Committee reported without amendment H. R. 8224, to reduce excise taxes (H. Rept. 1307)(p. 2564).

- 2-
6. SOIL CONSERVATION. The Interior and Insular Affairs Committee reported without amendment H. R. 7057, to authorize the Secretaries of Agriculture and Interior to transfer, exchange, and dispose of land in the Eden project, Wyo. (H. Rept. 1305) (p. 2580).
7. SECOND SUPPLEMENTAL APPROPRIATION BILL, 1954. Both Houses agreed to the conference report on this bill, H. R. 7996 (pp. 2564, 2517-8). This bill will now be sent to the President.
8. STATISTICS. Received from the Commerce Department a proposed bill to amend the act authorizing the Census Bureau to collect and publish cotton statistics; to Post Office and Civil Service Committee (p. 2580). The Post Office and Civil Service Committee ordered reported (but did not actually report) S. 2348, to repeal the act authorizing the Census Bureau to collect and publish redcedar shingles statistics (p. D235).
9. PURCHASING. The Judiciary Committee ordered reported (but did not actually report) S. 24, to permit review of decisions of Government contracting officers involving questions of fact arising under contracts in cases other than those in which fraud is alleged (three related bills were tabled, H. R. 1839, H. R. 3634, and H. R. 6946) (p. D234).
10. PERSONNEL. The Post Office and Civil Service Committee ordered reported (but did not actually report) H. R. 7774, to establish a uniform system for granting incentive awards to Federal employees. This bill consolidates all presently existing incentive awards programs, places all Federal employees thereunder, and permits the granting of an individual award up to \$25,000. Awards in excess of \$25,000 may be granted by the President, in conjunction with departmental awards (p. D235).
Subcommittees of the Post Office and Civil Service Committee were appointed to study H. R. 5718 and H. R. 5703, to limit the period for collection by the U.S. of compensation received by employees in violation of the dual compensation laws (Rep. St. George, chrmn.); and H. R. 6790, providing that the rate of pay for the Chairman of the Council of Economic Advisers shall be \$17,500 annually (Rep. Harden, chrmn.) (p. D235).
11. LEGISLATIVE PROGRAM for Fri., Mar. 5 as stated in the "Daily Digest": "The House will vote on passage of" the State-Justice-Commerce appropriation bill for 1955, and will consider bills to increase CCC's borrowing power and authorize cooperation with states, etc., in watershed development (p. D233).

SENATE

12. PRICE SUPPORTS. The Agriculture and Forestry Committee reported with amendments S. 2911, to provide for a special wool price support program through direct payments, loans, etc. (S. Rept. 1044) (p. 2482).
Sen. Humphrey strongly criticized Secretary Benson's reduction of dairy price supports and inserted newspaper articles and other communications opposing the Secretary's action (pp. 2494-8).
Sens. Ellender and Humphrey claimed Secretary Benson submitted misleading figures to Congress on the costs of the price support programs which Sen. Humphrey said "indicated a loss...of \$16 billion, when, as a matter of fact, the losses sustained...amounted to...a little more than \$1 billion." Sen. Ellender also criticized the discrepancy in the REA operations cost figures submitted by the Secretary and those contained in REA's annual report to Congress (pp. 2498-501).

~~2791, 3109, 3672, 3751, 3756, 3970, 4475, 4713, 5436, 5460, and 4532 (H. Repts. 1269-1302, respectively);~~

~~H. R. 573, to provide that no stamped or other envelope sold or furnished by the Post Office Department shall contain any lithographing, engraving, or printing (H. Rept. 1303);~~

~~H. R. 2098, to provide for the compensation of certain persons whose lands have been damaged and flooded by reason of fluctuations in the water level of the Lake of the Woods (H. Rept. 1304);~~

~~H. R. 7057, to authorize transfer, exchange, and disposition of land in the Eden project, Wyoming (H. Rept. 1305);~~

~~H. R. 8092, to facilitate the entry of Philippine traders (H. Rept. 1306);~~

~~H. R. 8224, to reduce excise taxes (H. Rept. 1307); and~~

~~H. R. 8127, authorizing appropriations to continue construction of roads and highways (H. Rept. 1308).~~

~~Pages 2580-2581~~

Private Calendar: Passed the following bills on the call of the Private Calendar: —

Cleared for the President: S. 153, 303, 502, and 827.

Sent to the Senate without amendment: H. R. 666, 1325, 2636, 2666, 3836, 4735, 4699, 4996, 6020, 6033, 6477, 6594, and 7559.

Sent to the Senate, amended: H. R. 858, 1100, 2634, 3145, 5765, 5772, and 7407.

Passed over without prejudice: S. 1432.

~~Pages 2533-2537~~

Private Bills: The following private bills were cleared for the President by House concurrence in Senate amendments thereto: H. R. 1883, 1969, 3275, and 2567.

~~Page 2538~~

State-Justice-Commerce Appropriations: Continued the consideration of H. R. 8067, making appropriations for the Departments of State, Justice, and Commerce, and the United States Information Service, but deferred final action on the bill until Friday.

Rejected amendments designed to—

Increase by \$697,000 funds for salaries and expenses of the Immigration and Naturalization Service;

Delete a limitation upon prosecution of Fallbrook Public Utility District case;

Reduce by \$20 million the funds provided for the U. S. Information Agency; and

Make the provisions of the Hatch Act applicable to the position of Administrator, Bureau of Security, State Department.

Adopted an amendment to earmark \$10,000 of funds of Commerce Department for a census and compilation of stocks of coffee on hand in the United States.

Also adopted an amendment increasing by \$5 million the funds for forest highways.

A request for a separate vote on the amendment increasing to \$40 million the funds for subsidy payments to air carriers was pending when further action was deferred until Friday.

~~Pages 2538-2564~~

Injured Members: Adopted, unanimously, H. Res. 456, providing for the payment of all medical expenses incurred in the treatment of the five Members injured on March 1, from the contingent funds of the House.

~~Page 2564~~

Second Supplemental Appropriations: Adopted the conference report on H. R. 7996, making supplemental appropriations for the fiscal year 1954.

~~Page 2564~~

Mexican Agricultural Workers: H. J. Res. 355, relating to the supplying of agricultural workers from Mexico, was cleared for Presidential action when the House agreed to Senate amendment thereto.

~~Page 2564~~

Baltic Seizure: Adopted H. Res. 438, extending the investigation of the seizure of certain Baltic peoples and their treatment, after adopting a committee amendment.

~~Pages 2564-2572~~

Aeronautical Research: Passed, by a voice vote, H. R. 7328, to promote the national defense by authorizing the construction of facilities by the National Advisory Committee for Aeronautics necessary for effective prosecution of aeronautical research. The bill authorizes an appropriation of \$5 million to finance the construction program.

H. Res. 453, the rule making in order the consideration of the bill, was adopted earlier.

~~Pages 2572-2574~~

Armed Forces: Concurred in Senate amendments to, and thus cleared for the President, H. R. 2326, continuing in effect until July 31, 1958, certain provisions of law relating to the authorized strengths of the Armed Forces.

~~Page 2574~~

Program for Friday: Adjourned at 5:04 p. m. until Friday, March 5, at 12 o'clock noon, when the House will vote on passage of H. R. 8067, State-Justice-Commerce appropriation bill for 1955; also will consider H. R. 7339, to increase the borrowing power of the Commodity Credit Corporation; and H. R. 6788, to authorize the Secretary of Agriculture to cooperate with States and local agencies in the planning and carrying out of works of improvement for soil conservation.

Committee Meetings

WOOL PRODUCTION

Committee on Agriculture: Ross Rizley, Assistant Secretary of Agriculture, today endorsed the provisions of H. R. 7775, to encourage increased domestic production of wool for our national security—to provide for the development of a sound and profitable domestic wool industry under our national policy of world trade. Committee will continue on same proposal tomorrow morning when it meets with wool-industry representatives.

WARRANT OFFICERS

Committee on Armed Services: Defense Department officials returned today to furnish further testimony before Subcommittee No. 2 which is considering H. R. 6374, a bill to provide a statutory plan for warrant officers of the Armed Forces similar to that provided for commissioned officers. The witnesses were Col. William A. Hamrick, Personnel Policy Division, Office of the Assistant Secretary of Defense; Lt. Col. John N. Davis, G-1 (Army); Comdr. J. D. Williams, Bureau of Personnel (Navy); Lt. Col. J. Brantley, Department of the Air Force; Col. E. P. Foley and Maj. T. L. Perkins, U. S. Marine Corps; Charles R. Hendry, chief warrant officer, Office of the Adjutant General; and A. R. Teta, secretary, U. S. Army-Navy Bandsman Association. Recessed until tomorrow morning.

HOUSING

Committee on Banking and Currency: Albert M. Cole, Administrator of the Federal Housing and Home Finance Agency, returned for his third consecutive day of testimony, during which he has favored the provisions of H. R. 7839, to aid in the provision and improvement of housing, the elimination and prevention of slums, and the conservation and development of urban communities. Appearing with Mr. Cole were Charles E. Slusser, Commissioner, Public Housing Administration; and Walter W. McAllister, Chairman of the Home Loan Bank Board. Recessed until tomorrow morning when it has scheduled as witnesses representatives of the Veterans' Administration, Defense Department, and the AFL.

TAFT-HARTLEY LAW

Committee on Education and Labor: Reconsidered yesterday's action and voted 14 to 14 today to affirm a policy proposal which would require that cases of unfair labor practices be turned over to Federal district courts, giving complainants the alternative rights to present their own cases or have the U. S. district attorneys handle them; and to continue the National Labor Relations Board functioning as an administrative governmental agency, but limiting the Board to the handling of representation matters including conduct of collective-bargaining elections. The vote on the same proposal yesterday was 14 to 13. Recessed until Monday morning.

UNITED NATIONS

Committee on Foreign Affairs: The Subcommittee on International Organizations and Movements discussed the United Nations and specialized agencies today with the following witnesses—Adm. W. R. Furlong, U. S. Navy (retired); Mrs. Ernest Howard, representing the Wheel of Progress, Washington, D. C.; and Mrs. John G. Lee, president of the League of Women Voters of the U. S.

MIDWESTERN STATES COMPACT

Committee on Interior and Insular Affairs: The Subcommittee on Irrigation and Reclamation considered, but took no action on, H. R. 6894 and 7439, granting congressional consent to compact negotiations between certain Midwestern States regarding development of land and water resources in the Missouri Basin. Testimony endorsing the proposal was presented by L. C. Bishop, State engineer of Wyoming; Maynard M. Hupschmidt, Department of Interior, assisted by T. R. Witmer, Bureau of Reclamation; and Eugene W. Weber, Corps of Engineers. Adjourned subject to call of the Chair.

GRANTS-IN-AID, HEALTH PROGRAM

Committee on Interstate and Foreign Commerce: Oveta Culp Hobby, Secretary of Health, Education, and Welfare, testified today on behalf of H. R. 7397, a bill designed to simplify and improve the several grant-in-aid programs, other than the Hospital Survey-and Construction Program, which are now administered pursuant to the provisions of the Public Health Service Act. Participating in the presentation of her testimony was Nelson Rockefeller, Under Secretary of Health, Education, and Welfare. Also present, to assist in answering technical questions, were Dr. Leonard A. Scheele, Surgeon General of the Public Health Service, and Dr. Jack Haldeman and Sam Kimble, also from the Public Health Service. Mrs. Hobby will return tomorrow morning to continue her presentation.

CONTRACTING OFFICERS—PRAYERS—PEACE—CLAIMS

Committee on the Judiciary: Ordered the following bills reported to the House—

S. 24, amended, to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged (three related bills on this subject were tabled, H. R. 1839, 3634, and 6946);

S. Con. Res. 63, amended, requesting American churches and synagogues to devote portions of their services on April 18 (Easter and the Passover) to special prayer for deliverance of those behind the Iron Curtain;

H. R. 2098, amended, providing for the compensation of certain persons whose lands have been flooded and damaged by reason of fluctuations in the water level of the Lake of the Woods;

H. R. 7786, to honor veterans on the 11th day of November of each year, a day dedicated to world peace; and

12 private claim bills (11 of the House and 1 of the Senate). One private claim bill of the House was tabled.

MILITARY SEA TRANSPORTATION SERVICE

Committee on Merchant Marine and Fisheries: A special subcommittee held executive consideration today on

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

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HIGHLIGHTS: House committees reported bills to sell FFMC assets to land banks and to authorize court review of contracts. Rep. Johnson, Wis., spoke against reduction in dairy price supports. Rep. Angell recommended distribution of surplus commodities to needy. Sen. Humphrey spoke against reduction in dairy price supports. Sen. Watkins praised President's support of upper Colo. River storage project. Rep. Cooley introduced bill to create Agricultural Foreign Service. Rep. Dawson inserted and commended Secretary's speech on price supports.

HOUSE

1. FARM LOANS. The Agriculture Committee reported without amendment H. R. 6711, to authorize the Federal land banks to make a bulk purchase of certain remaining assets of the Federal Farm Mortgage Corporation (H. Rept. 1378) (p. 3463).
The Rules Committee reported a resolution for consideration of H. R. 8152, to continue VA's direct home and farmhouse loan authority (p. 3463).
2. PURCHASING. The Judiciary Committee reported with amendment S. 24, to permit court review of decisions of Government contracting officers involving questions of fact arising under Government contracts in which fraud is alleged (H. Rept. 1380) (p. 3463).
3. THIRD SUPPLEMENTAL APPROPRIATION BILL, 1954 (see Digest 52) is H. R. 8481 (H. Rept. 1372) (p. 3463).
4. DAIRY PRICE SUPPORTS. Rep. Johnson, Wis., spoke against reduction in dairy price supports (p. 3444).
5. SURPLUS COMMODITIES. Rep. Angell recommended distribution of surplus commodities to the needy (pp. 3461-2).
6. PERSONNEL. Both Houses received the annual report of the Civil Service Commission (H. Doc. 261) (pp. 3391-2, 3446).

SENATE

7. PRICE SUPPORTS. Sen. Humphrey criticized the reduction of dairy price supports, urged passage of S. 2962 to limit such reductions to 5% annually, claimed an "apparent tendency...to avert a showdown" on S. 2911 (the wool bill) by deferring action thereon after he submitted his amendment thereto to limit dairy-support reductions, and inserted various editorials and communications favoring present support levels for dairy and other farm products (pp. 3437-42).

Sen. Thye inserted a Glencoe, Minn., Butter and Produce Association resolution opposing reduction in dairy supports (p. 3393).

8. RECLAMATION; ELECTRIFICATION. Sen. Watkins discussed the upper Colorado River storage project, praised the President's support of the project, and claimed this action answers critics of the administration's program for reclamation, water, and power development (pp. 3431-7).

9. ALASKA STATEHOOD. Sen. Anderson inserted statements favoring Alaska statehood (pp. 3397-8).

10. FOREIGN TRADE. Sen. Wiley inserted a statement from the Appleton, Wis., Chamber of Commerce favoring protective tariffs (p. 3396).

11. FARM PROGRAM. Sen. Carlson inserted a number of Farmers Union Jobbing Assn. resolutions including resolutions favoring strong cooperatives, an aggressive research program, completion of the REA electrification and telephone programs, extension of the present price-support program for 2 years; opposing increase in interest rate on CCC loans; and urging Congress to watch "any action that would retard an adequate...soil conservation program" as a result of the recent USDA reorganization (pp. 3393-4).

BILLS INTRODUCED

12. FARM LOANS. H. R. 8486, by Rep. Edmondson, to amend Sec. 502 of the Servicemen's Readjustment Act of 1944 so as to increase the maximum amount in which farm realty loans may be guaranteed thereunder; to Veterans' Affairs Committee (p. 3463).

13. PROPERTY. H. R. 8492, by Rep. Tollefson, to provide that transfers of real property from certain Government corporations to other Government agencies shall not operate to remove such real property from local tax rolls; to Government Operations Committee (p. 3464).

14. DAIRY INDUSTRY. H. R. 8493, by Rep. Westland, to provide an adequate, balanced, and orderly flow of milk and dairy products in interstate and foreign commerce; to stabilize prices of milk and dairy products; to impose a stabilization fee on the marketing of milk and butterfat; to Agriculture Committee (p. 3464). Remarks of author (p. A2146).

15. FARM LABOR. H. R. 8494, by Rep. Yorty, to extend the Fair Labor Standards Act to certain farm labor and to liberalize it in various respects; to Education and Labor Committee (p. 3464). Remarks of author (p. A2147).

16. AGRICULTURAL FOREIGN SERVICE. H. R. 8495, by Rep. Cooley, to authorize an Agricultural Foreign Service in this Department, etc.; to Agriculture Committee (p. 3464).

17. RECLAMATION. H. R. 8498, by Rep. Phillips, authorizing works to reestablish reclamation facilities for Palo Verde District, Calif.; to Interior and

FINALITY CLAUSES IN GOVERNMENT CONTRACTS

MARCH 22, 1954.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REED of Illinois, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 24]

The Committee on the Judiciary, to whom was referred the bill (S. 24) to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That no provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however,* That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

Amend the title to read as follows:

A bill to permit review of decisions of the heads of departments, or their representatives or boards, involving questions arising under Government contracts.

PURPOSE

The purpose of the proposed legislation, as amended, is to overcome the effect of the Supreme Court decision in the case of *United States v. Wunderlich* (342 U. S. 98), rendered on November 26, 1951, under which the decisions of Government officers rendered pursuant

to the standard disputes clauses in Government contracts are held to be final absent fraud on the part of such Government officers.

The Supreme Court there defined fraud to mean "conscious wrongdoing, an intention to cheat or be dishonest." The proposed legislation also prescribes fair and uniform standards for the judicial review of such administrative decisions in the light of the reasonable requirements of the various Government departments and agencies, of the General Accounting Office and of Government contractors. It will also prohibit the insertion in Government contracts hereafter executed of provisions making the decisions of Government officers final on questions of law arising under such contracts.

LEGISLATIVE HISTORY

Shortly after the Supreme Court rendered its decision in the Wunderlich case in 1951, several bills were introduced in both Houses in the 82d Congress to overcome the effect of that decision.

Those bills, H. R. 6214, H. R. 6301, H. R. 6338, and H. R. 6404, and S. 2487—all of the 82d Congress—had the same purpose as the bill S. 24 under discussion here. The Senate passed the bill, S. 2487, after hearings which were available to this committee, but it was too late in the session for the House to act.

The Senate passed the bill, S. 24, during the first session of the 83d Congress. In the meantime, several similar bills had been introduced in the House of Representatives. These bills, H. R. 1839, H. R. 3634, and H. R. 6946, were the subjects of lengthy hearings, as was the bill, S. 24. The witnesses included representatives from the various Government departments and from private contractors. The printed hearings also contain the departmental reports on the various bills.

At the outset of the hearings in the first session, objection was voiced by representatives of the Department of Defense and various defense industries to these bills. The objection was predicated upon a supposed fear that the inclusion of the Controller General in the wording of the bill would destroy the finality which existed under the Defense Department procedures. However, at the outset of the hearings in the second session, the Controller General submitted to the committee an amendment to the bills in the form of a substitute. This amended version was favored by practically all the witnesses, including those who had formerly opposed the bill. It is this version which the committee favorably reports in its amendments.

STATEMENT

For many years the standard forms of Government contracts have contained a disputes clause which usually reads as follows:

Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed.

Prior to the Supreme Court decision in the Wunderlich case it was generally understood that administrative decisions rendered under these disputes clauses were final and would not be reviewed by the

courts unless the decision was fraudulent, or arbitrary, or capricious, or so grossly erroneous as necessarily to imply bad faith. However, the majority opinion in the Wunderlich case rejected arbitrariness or capriciousness as grounds for review and limited judicial review to the sole ground of fraud which it defined as "conscious wrongdoing, an intention to cheat or to be dishonest."

The Supreme Court was aware of the rigidity of the standard of judicial review therein prescribed and further stated:

If the standard of fraud that we adhere to is too limited, that is a matter for Congress.

Since the decision of the Supreme Court in the Wunderlich case, no litigant before the United States Court of Claims or before any other court has been successful in establishing the mental state of fraud as defined in the majority opinion. Cases in which a plea of fraud could not be made have been dismissed, the Court of Claims in *Palace Corporation v. United States* (124 C. Cls. 545, 549) saying:

Until the time of the decision in that case (Wunderlich), this court had reviewed the contracting officer's decision when it was shown to be arbitrary, capricious, or so grossly erroneous as to imply bad faith, notwithstanding the parties had contracted that all matters of disputed fact might be decided by one of the parties to the contract. Such a provision we had understood called for the highest good faith on the part of the interested party making the decision.

The Supreme Court in construing the standard form of article 15 has now limited the scope of review of decisions of heads of departments to cases in which positive fraud is alleged and proved. No fraud is alleged in this case. It would be a sheer waste of time and energies of the court and the litigants to hear evidence beyond the limits of the blueprint clearly drawn by the highest judicial authority.

The consequences reasonably to be expected to flow from the rule adopted by the majority in the Wunderlich case are described in two dissenting opinions in that case. Mr. Justice Douglas and Mr. Justice Reed in one dissenting opinion stated:

* * * But the rule we announce has wide application and a devastating effect. It makes a tyrant out of every contracting officer. He is granted the power of a tyrant even though he is stubborn, perverse or captious. He is allowed the power of a tyrant though he is incompetent or negligent. He has the power of life and death over a private business even though his decision is grossly erroneous. Power granted is seldom neglected.

The principle of checks and balances is a healthy one. An official who is accountable will act more prudently. A citizen who has an appeal to a body independent of the controversy has protection against passion, obstinacy, irrational conduct, and incompetency of an official. The opinion by Judge Madden in this case expresses a revulsion to allowing one man an uncontrolled discretion over another's fiscal affairs. We should allow the Court of Claims, the agency close to these disputes, to reverse an official whose conduct is plainly out of bounds whether he is fraudulent, perverse, captious, incompetent, or just palpably wrong. The rule we announce makes government oppressive. The rule the Court of Claims espouses gives a citizen justice even against his Government.

Mr. Justice Jackson, in a separate dissenting opinion said:

* * * But one who undertakes to act as a judge in his own case, or what amounts to the same thing, in the case of his own department, should be under some fiduciary obligation to the position which he assumes. He is not at liberty to make arbitrary or reckless use of his power, nor to disregard evidence, nor to shield his department from consequences of its own blunders at the expense of contractors. He is somewhat in the position of the lawyer dealing with his client or the doctor with his patient, for the superiority of his position imposes restraints appropriate to the trust. Though the contractor may have covenanted to be satisfied with what his adversary renders to him, it must be true that he

who bargains to be made judge of his own cause assumes an implied obligation to do justice. This does not mean that every petty disagreement should be re-adjudged, but that the courts should hold the administrative officers to the old but vanishing standard of good faith and care.

I think that we should adhere to the rule that where the decision of the contracting officer or department head shows "such gross mistake as necessarily to imply bad faith" there is a judicial remedy even if it has its origin in overzeal for the department, negligence of the deciding official, misrepresentations—however innocent—by subordinates, prejudice against the contractor, or other causes that fall short of actual corruption. Men are more often bribed by their loyalties and ambitions than by money. I still believe one should be allowed to have a judicial hearing before his business can be destroyed by administrative action, although the Court again thinks otherwise. * * *

After extensive hearings it has been concluded that it is neither to the interests of the Government nor to the interests of any of the industry groups that are engaged in the performance of Government contracts to repose in Government officials such unbridled power of finally determining either disputed questions of law or disputed questions of fact arising under Government contracts, nor is the situation presently created by the Wunderlich decision consonant with tradition that everyone should have his day in court and that contracts should be mutually enforceable. A continuation of this situation will render the performance of Government work less attractive to the responsible industries upon whom the Government must rely for the performance of such work, and will adversely affect the free and competitive nature of such work. It will discourage the more responsible element of every industry from engaging in Government work and will attract more speculative elements whose bids will contain contingent allowances intended to protect them from unconscionable decisions of Government officials rendered during the performance of their contracts.

A principal change which the amendment effects in S. 24 is to restore the standards of review based on arbitrariness and capriciousness. These have long been recognized as constituting a sufficient basis for judicial review of administrative decisions, a reference to capricious action on the part of a Government contracting official vested with discretionary power of decision being found as early as 1911 in the decision of the Supreme Court in *Ripley v. United States* (223 U. S. 695). The standards of arbitrariness and capriciousness in relation to the review of administrative action were also prescribed in the Administrative Procedures Act (act of June 11, 1946, ch. 324, sec. 10, 60 Stat. 243; 5 U. S. C. 1009). There is a wealth of judicial precedent behind these standards of review and it is the committee's belief that they should not be abandoned.

The proposed amendment also adopts the additional standard that the administrative decision must be supported by substantial evidence. The requirement that administrative action be supported by substantial evidence is found in the Administrative Procedures Act, *supra*. As understood by the committee and as interpreted by the Supreme Court in *Edison Company v. National Labor Relations Board* (305 U. S. 197, 229), "substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

The inclusion of the standard "not supported by substantial evidence" should also correct another condition arising out of the lack of uniformity between the various departments and agencies

concerned in the appellate hearing procedures under the disputes clause. It has been brought to light in public hearings that it is the exception rather than the rule that contractors in the presentation of their disputes are afforded an opportunity to become acquainted with the evidence in support of the Government's position. It is believed that if the standard of substantial evidence is adopted this condition will be corrected and that the records of hearing officers will hereafter contain all of the testimony and evidence upon which they have relied in making their decisions. It would not be possible to justify the retention of the finality clauses in Government contracts unless the hearing procedures were conducted in such a way as to require each party to present openly its side of the controversy and afford an opportunity of rebuttal.

In recent years there has been an increased tendency on the part of Government specification writers to include in specifications additional clauses which have the effect of giving Government officials the right to determine finally the legal obligation of the parties under the contract. This right has been reserved to the Government in addition to the right to determine finally all disputed questions of fact. The validity of a contract provision reserving to Government officials the right to determine legal questions has been upheld by the Supreme Court in *United States v. Moorman* (338 U. S. 457), where the Court pointed out that "No congressional enactment condemns their creation or enforcement."

No witness before this committee, Government or otherwise, has offered any justification for the reservation of the right of a Government official to finally declare the law of a contract or to finally interpret the legal effect or meaning of the contract documents. There is no justification for the assumption of such a duty which normally reposes in the judiciary branch of the Government. The reservation of such right not only deprives the contract of mutuality and enforceability but is also foreign to our concept of equality when the Government steps down from its sovereign role to become the party to a contract with one of its citizens. Reservations of this character have never been made the basis for mutual negotiation and it has been made abundantly clear to the committee that any bid which a contractor might file seeking to eliminate such a reservation from the contract would be characterized as irregular and would result in the bid being ignored. Section 2 of the proposed legislation will prohibit the inclusion of such reservation in future contracts and the first section of the proposed legislation will render decisions made under such reservation in present contracts subject to judicial review under the standards therein prescribed.

Under section 2 of the bill, the committee intends not only to prohibit the insertion in a Government contract of a provision making final a decision of a contracting officer on a question of law, but also bans the indirect insertion of such a provision by incorporation by reference. This will prevent the use of what is commonly known as "the all disputes clause," whereby finality of decision was given as to questions of both law and fact. This provision will also prevent the insertion of such a clause in any drawings, plans, specifications, or any other document which might be incorporated by reference into the contract itself.

At present there are numerous disputed questions arising out of contracts pending before the various departments and agencies charged with the letting of such contracts. There are also a limited number of cases pending before the United States Court of Claims seeking judicial review of decisions that have heretofore been rendered by administrative officers under disputes clauses. Many of the contracts upon which present disputes are pending were entered into prior to the time that the Wunderlich case was decided and at a time when the persons involved therein understood that judicial review was available to them on a less restricted basis than that of fraud. The committee believes that all of such persons should receive the protection which would be afforded by this proposed legislation, but it does not believe that it would be practicable to reopen cases which have heretofore been decided by the courts.

While the committee believes that S. 24 as passed by the Senate would adequately cover all unadjudicated cases now on file in the courts as well as those to be filed, the proposed amendment makes this abundantly clear by inserting such language.

The committee foresees no possibility of the proposed legislation creating any new rights that a contractor may not have had prior to its enactment, with the exception of the standards of review therein prescribed. Under the terms of the standard disputes clause the decision of a contracting officer is final unless the contractor appeals within 30 days. The Supreme Court in *United States v. Holpuch Co.* (328 U. S. 234), has held that unless a contractor pursues the administrative remedy of appeal to the head of the department which he is granted by the disputes clause, he loses his right to sue in the Court of Claims. Government contractors who have not appealed their decisions to the head of the department within the 30-day period will not be permitted to do so.

The statute of limitations regarding claims against the United States is jurisdictional and prevents the consideration of a claim which is more than 6 years old. Claims less than 6 years old, and not heretofore filed in the courts may, if filed, receive the protection of the proposed legislation. In this way the basic requirement of the contract that an appeal be noted to the head of the department within 30 days, as well as the protection which the Government receives under the statute of limitations applicable to these matters, have been retained.

The proposed legislation, as amended, with the exception of the words "in any case now on file or to be filed" is exactly the same legislation suggested by the Comptroller General in a letter to the chairman of this committee dated December 30, 1953. That letter reads in part as follows:

We have reason to believe that should the Congress decide to enact legislation on this subject there would be no opposition to this substitute language by various representatives of industry groups, * * *. And representatives of interested administrative agencies have indicated to us that while they believe no legislation is necessary, there probably would be little or no opposition to the particular language of this substitute draft. In my judgment the substitute language will accomplish what we have been striving for all along and will place the General Accounting Office in precisely the same situation it was in before the decision in the Wunderlich and Moorman cases.

The proposed legislation, as amended, will not add to, narrow, restrict, or change in any way the present jurisdiction of the General

Accounting Office either in the course of a settlement or upon audit, and the language used is not intended either to change the jurisdiction of the General Accounting Office or to grant any new jurisdiction, but simply to recognize the jurisdiction which the General Accounting Office already has.

The elimination of the specific mention of the General Accounting Office from the provisions of the bill as amended should not be construed as taking away any of the jurisdiction of that Office. It is intended that the General Accounting Office, as was its practice, in reviewing a contract and change orders for the purpose of payment, shall apply the standards of review that are granted to the courts under this bill. At the same time there is no intention of setting up the General Accounting Office as a "court of claims." Nor should the elimination of the specific mention of the General Accounting Office in the bill be construed as limiting its review to the fraudulent intent standard prescribed by the Wunderlich decision.

The specific intent of this legislation, insofar as it affects the General Accounting Office, is explicitly stated in the letter of December 30, 1953, from the Comptroller General himself, in which he stated as follows:

With respect to the second mentioned basis of opposition to the pending bills it should be pointed out that the General Accounting Office has not asked for authority which it did not have before the decision in the Wunderlich case. This was made clear in the testimony of representatives of this Office before the Senate subcommittee which held hearings on the somewhat similar bill, S. 2487. In this connection see the committee report on S. 24 (S. Rept. 32) wherein it is stated:

"The committee wishes to point out with respect to the language contained in the bill, 'in the General Accounting Office or a court, having jurisdiction,' that it is not intended to narrow or restrict or change in any way the present jurisdiction of the General Accounting Office, either in the course of a settlement or upon audit; that the language in question is not intended either to change the jurisdiction of the General Accounting Office or to grant any new jurisdiction, but simply to recognize the jurisdiction which the General Accounting Office already has."

That was and is precisely the position of the General Accounting Office.

Representatives of industry, of the General Accounting Office, and of the Department of Defense have stated their views in public hearings as being favorable to the proposed legislation, as amended.

Since the printed hearings contain the departmental views as expressed by their witnesses as well as the departmental reports on this legislation, those reports are not printed with this report.



Union Calendar No. 520

83D CONGRESS
2D SESSION

S. 24

[Report No. 1380]

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1953

Referred to the Committee on the Judiciary

MARCH 22, 1954

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That no provision of any contract entered into by the United*
4 *States, relating to the finality or conclusiveness, in a dispute*
5 *involving a question arising under such contract, of any*
6 *decision of an administrative official, representative, or board,*
7 *shall be pleaded as limiting judicial review of any such de-*
8 *cision to cases in which fraud by such official, representative,*
9 *or board is alleged; and any such provision shall be void*

1 with respect to any such decision which the General Account-
2 ing Office or a court, having jurisdiction, finds fraudulent,
3 grossly erroneous, so mistaken as necessarily to imply bad
4 faith, or not supported by reliable, probative, and substantial
5 evidence.

6 SEC. 2. No Government contract shall contain a pro-
7 vision making final on a question of law the decision of an
8 administrative official, representative, or board.

9 That no provision of any contract entered into by the United
10 States, relating to the finality or conclusiveness of any deci-
11 sion of the head of any department or agency or his duly au-
12 thorized representative or board in a dispute involving a ques-
13 tion arising under such contract, shall be pleaded in any suit
14 now filed or to be filed as limiting judicial review of any such
15 decision to cases where fraud by such official or his said rep-
16 resentative or board is alleged: Provided, however, That any
17 such decision shall be final and conclusive unless the same is
18 fraudulent or capricious or arbitrary or so grossly erroneous
19 as necessarily to imply bad faith, or is not supported by sub-
20 stantial evidence.

21 SEC. 2. No Government contract shall contain a provi-
22 sion making final on a question of law the decision of any
23 administrative official, representative, or board.

Amend the title so as to read: "An Act to permit review of decisions of the heads of departments, or their representatives or boards, involving questions arising under Government contracts."

Passed the Senate June 8, 1953.

Attest:

J. MARK TRICE,

Secretary.

83d CONGRESS
2d SESSION

S. 24

[Report No. 1380]

AN ACT

To permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

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Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued April 27, 1954
For actions of April 26, 1954
83rd-2nd, No. 76

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HIGHLIGHTS: Senate debated wool bill and amendment to continue 90% price supports. House passed bill to discontinue certain USDA reports to Congress. House passed bill to permit court review of Government contracts. Rep. Hope inserted his speech on watershed conservation.

SENATE

1. PRICE SUPPORTS. Continued debate on S. 2911, the wool price supports bill, and the Ellender amendment to continue mandatory price supports at 90% of parity on certain commodities for two additional years (pp. 5173-8, 5182-94, 5196-205). Sen. Carlson inserted resolutions of the Farmers Cooperative Commission Co. and the Kansas Farmers Service Assn. favoring continuation of 90% supports (p. 5164).
2. GAO REPORT. Both Houses received the 1953 annual report of the Comptroller General (pp. 5164, 5237).
3. FOREIGN REPORTING SERVICE. The Investigations Division of the Senate Appropriations Committee has released a committee print of a report, "Foreign Reporting Service," discussing the needs of this Department and others for foreign reporting and the activities of the State Department in this connection. File copies of the committee print are available for lending purposes from the Legislative Reporting Staff, B&F.

HOUSE

4. ROAD AUTHORIZATIONS. Agreed to S. Con. Res. 78, authorizing a correction in the enrolling of H. R. 8127, the road-authorization bill, before sending it to the President (p. 5207).
5. CONTRACTS. Passed as reported S. 24, to permit court review of decisions of department heads, or their representatives or boards, involving questions arising under Government contracts (p. 5212).
6. RECLAMATION. Passed as reported H. R. 6786, authorizing Interior to purchase

improvements or pay damages for removal of improvements located on public lands in the Palisades project area, Idaho (p. 5214).

7. DISBURSING. Passed with amendment S. 2844, to make permanent the authority for U. S. disbursing officers to cash and negotiate checks, drafts, and bills of exchange and other instruments payable in U. S. and foreign currencies for official purposes or for the accommodation of military or civilian personnel and personnel of contractors, and to conduct exchange operations, etc. (pp. 5214-5).
8. PROPERTY. Passed with amendments H. R. 5605, to amend the Federal Property and Administrative Services Act to provide that transfers of real property from certain Government corporations to other Government agencies shall not operate to remove such real property from local tax rolls (pp. 5210-2).
9. APPROPRIATIONS. The Appropriations Committee reported without amendment H. R. 8873, the Defense Department appropriation bill for 1955 (H. Rept. 1545) (p. 5237).
10. REPORTS. Passed as reported H. R. 6290, to discontinue certain reports now required by law (pp. 5212-3). The following are among the reports which would be discontinued: Reports to Congress on the four regional research laboratories; claims over \$1,000 compromised under the Bankhead-Jones Farm Tenant Act, status of the Farm Tenant-Mortgage Insurance Fund, and contract research under the Research and Marketing Act of 1946; and reports to the President accounting for funds received and expended.

Received the following reports: From Interior on potential irrigation near the Chief Joseph Dam (H. Doc. 374); from Army on flood control on the upper Iowa River (H. Doc. 375); from Commerce on export control (pp. 5236-7).

BILLS INTRODUCED

11. MINERALS. S. 3344, by Sen. Willikin (for himself and others), and S. 3347, by Sen. Dworshak (for himself and Sen. Anderson), to amend the mineral leasing laws to provide for multiple mineral development of the same tracts of public lands; to Interior and Insular Affairs Committee (p. 5165).
12. LIVESTOCK. S. 3348, by Sen. McCarran, to adjust claims against the Atomic Energy Commission for injury to or loss of livestock; to Joint Committee on Atomic Energy (p. 5165).
13. WATER-FACILITIES LOANS. H. R. 8874, by Rep. Battle, to extend the Water Facilities/^{Act} to the entire country and increase the project limit; to Agriculture Committee (p. 5237).
14. FARM LOANS. H. R. 8879, by Rep. Dempsey, to authorize FCA to make loans of the type formerly made by the Land Bank Commissioner; to Agriculture Committee (p. 5237).
15. FORESTRY. H. R. 8880, by Rep. Hope, to provide for the sale of certain lands in national forests; to Agriculture Committee (p. 5237).
16. CONTRACTS. H. R. 8882, by Rep. Philbin, to provide that preference be given in the awarding of Government procurement contracts to firms which will perform a substantial portion of the production on such contracts in areas having a labor surplus; to Judiciary Committee (p. 5238).

"Sec. 704. Taxation of property transferred from Government corporations.
"Sec. 705. General provisions.
"Sec. 706. Effective date and expiration of this title."

"Sec. 2. Such act is further amended by adding at the end thereof the following new title:

"TITLE VII—TAXATION BY LOCAL TAXING AUTHORITIES

"DECLARATION OF POLICY

"SEC. 701. The Congress recognizes that the transfer of real property having a taxable status from a Government corporation to another Government agency often operates to remove such property from the tax rolls of local taxing authorities, thereby creating an undue and unexpected burden upon such local taxing authorities and causing disruption of their operations. It is the purpose of this title to furnish temporary measures of relief for such local taxing authorities by providing that when property having a taxable status is so transferred by a Government corporation, for the duration of this title such property shall be subject to taxation by local taxing authorities while it is leased for commercial purposes, and in certain other cases, payments in lieu of taxes shall be made with respect to such property, regardless of subsequent transfers of such property among agencies of the Federal Government.

"DEFINITIONS

"SEC. 702. As used in this title—

"(a) the term "State" means the several States, Alaska, Hawaii, and the District of Columbia;

"(b) the term "real property" means land, and includes those improvements on land and interests in land which, for the purposes of taxation, are characterized as real property by the State in which the land is located;

"(c) the term "local taxing authority" means a State, county, municipality, or other subdivision of a State, county, or municipality, which subdivision has authority to levy and collect taxes upon real property;

"(d) the terms "tax" and "taxation" include special assessments.

"(e) the term "Government corporation" means the Central Bank for Cooperatives and Regional Banks for Cooperatives; Commodity Credit Corporation; Federal Farm Mortgage Corporation; Federal home loan banks; Federal land banks; Federal National Mortgage Association; Federal Savings and Loan Insurance Corporation; Production Credit Corporation; and the Reconstruction Finance Corporation; and such term includes any corporation (1) which is incorporated after the effective date of this title by or under an act of Congress, and (2) which is owned or controlled by the Federal Government; and

"(f) the term "Federal Government" includes any Government corporation.

"TAXATION OF PROPERTY OF GOVERNMENT CORPORATIONS

"SEC. 703. When a Government corporation is incorporated after the effective date of this title, unless specifically provided otherwise, all real property owned by such Government corporation shall be subject to taxation by local taxing authorities to the same extent according to its value as other real property.

"TAXATION OF PROPERTY TRANSFERRED FROM GOVERNMENT CORPORATIONS

"SEC. 704. (a) When real property which is taxable by local taxing authorities is transferred from a Government corporation to any department, agency, or other instrumentality of the Federal Government, during all periods in which the real property is leased for commercial purposes, such real property shall remain subject to taxation by local taxing authorities to the same extent according to its value as other real property

is taxed, notwithstanding such transfer or any subsequent transfer of such property to a department, agency, or other instrumentality of the Federal Government.

"(b) In the case of real property which is taxable by local taxing authorities and which is transferred from a Government corporation to any department, agency, or other instrumentality of the Federal Government, so long as the Federal ownership of such real property continues, the Federal Government shall make payments in lieu of taxes with respect to such real property for all periods during which such real property is not subject to taxation under subsection (a). The payments in lieu of taxes shall equal the amounts which would be payable as real property taxes if the real property were privately owned, less appropriate deductions (1) for benefits to local taxing authorities arising out of the operations of the Federal Government with respect to such real property (including payments of a portion of the revenue derived from the use or products of such real property), and (2) for the cost to the Federal Government of furnishing services with respect to such real property which are normally furnished by local taxing authorities.

"(c) This section shall take effect as of June 22, 1948, except that no taxes shall be paid, or payments in lieu of taxes made, for any period prior to the effective date of this title.

"GENERAL PROVISIONS

"SEC. 705. (a) The Federal Government shall not be subject to penalties or penalty interest nor shall its property (including rights of action) be subject to any lien, foreclosure, garnishment, or other proceedings because of its nonpayment or failure to make timely payment of taxes on real property; nor shall any subsequent purchaser be liable for such penalties or penalty interest.

"(b) No payments in lieu of taxes shall be made under this title with respect to any real property of the following types:

"(1) Real property which is taxable by local taxing authorities under other provisions of law, or with respect to which payments in lieu of taxes are payable under other provisions of law.

"(2) Real property used or held primarily for purposes for which property under private ownership would be exempt from taxation under the constitution or laws of the State where the property is located.

"(3) Real property used or held primarily for services to the local public, including but not limited to the following: Defense installations; courthouses; post offices, and property incidental to postal operations; federally owned airports maintained and operated by the Civil Aeronautics Administration.

"(4) Office buildings and facilities which are incidental to or an integral part of the properties described in this subsection.

"EFFECTIVE DATE AND EXPIRATION OF THIS TITLE

"SEC. 706. This title shall take effect on January 1, 1954, and shall expire on December 31, 1956."

Mr. CANNON. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, the Vice President, speaking for the administration last week announced, evidently in conformity with a carefully considered plan that under no circumstances would the United States consent to the subjugation of Indochina by Communist forces. He made it plain that with the approval and cooperation of our friends and allies, or without their approval and cooperation, it was the settled policy and considered purpose of the United States to intervene, if necessary,

to preserve the integrity of Indochina. He declared, in brief, that the United States would have to send combat troops into Indochina if the French proved incapable of protecting southeast Asia from Communist pressure.

In corroboration of this statement of policy the newspapers yesterday carried a further quotation from the Vice President to the effect that the interview was not a trial balloon, through which the administration sought to ascertain the trend of public opinion at home or abroad, but a plain unequivocal announcement on the part of the United States of its purpose, aided or unaided, to oppose communist expansion in Southeast Asia even to the point of sending in ground troops.

The Vice President's comments and assurances seemed all the more timely in view of the fact that the United States has been paying, and continues to pay, 78 percent of the cost of the war in Indochina.

Consequently it was a matter of some surprise to note in this morning's papers the statement—and I read from the Washington Post and Times-Herald—that the United States will not enter the Indochina War to save any or all of that country from conquest by the Communist forces—apparently a complete reversal of the policy proclaimed last week.

Now I am not discussing the merits or demerits of the issues involved.

I am merely saying that the country should know—and House must know what is proposed to be done with and in Indochina. The newspapers have been featuring articles for the last several days guardedly anticipating the extermination of the gallant garrison at Dien Bien Phu. It is evident that the people of the United States are being prepared and conditioned for the inevitable.

But the fall of this doomed bastion, so valiantly defended, marks the end of a chapter in Asiatic history. It is a dead line. It is the point at which the United States must take a position and stand on it. And our decision as to what that position will be is of far reaching consequence.

The armed-services appropriation bill was reported out by the committee today and will be taken up for consideration here in the House next Wednesday. Under the circumstances it is perhaps the most important bill which will come before Congress during this session.

The bill reported this morning is based on the expectation that we are to enjoy continuing peace for the coming fiscal year. If that expectation is not to be realized it will be necessary to revise important items in the bill.

The time is short. The committee and the House should know without delay what to expect. Is it the intention to defend Indochina under all contingencies as indicated last week. Or has it been determined, as reported in this morning's releases that we will not enter the Indochina war to save that country or any part of it.

I trust we are to have some definite and authoritative information on which to formulate a bill here in the House

rather than send it to another body for any material revision which a change in policy may dictate.

The SPEAKER. The time of the gentleman from Missouri [Mr. CANNON] has expired.

(Mr. CANNON asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN of Michigan. Mr. Speaker, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. HOFFMAN of Michigan to the committee amendment: Page 7, line 11 of the committee amendment, strike out "furnished" and insert "furnish."

The amendment to the committee amendment was agreed to.

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Federal Property and Administrative Services Act of 1949 to provide for payment of taxes or payments in lieu of taxes with respect to real property transferred from Government corporations to other agencies of the Federal Government."

A motion to reconsider was laid on the table.

[Mr. TOLLEFSON addressed the House. His remarks will appear hereafter in the Appendix.]

FINALITY CLAUSES IN GOVERNMENT CONTRACTS

The Clerk called the bill (S. 24) to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. HARDY. Mr. Speaker, reserving the right to object, I wonder if somebody will explain just what this bill does?

Mr. GRAHAM. Mr. Speaker, growing out of a case in 1951, there was a great deal of confusion arose with reference to Government contracts. The Senate passed a bill which came to the House. In the House we passed our own bill. The Comptroller General of the United States made suggestions which were adopted and which were satisfactory to the Senate and to the House. As a consequence, we are here with the unanimous approval of both the House, the Senate, and the Comptroller General.

Mr. HARDY. That is the point I wanted to get clear. I recall that some years ago the Committee on Expenditures gave quite a bit of consideration to this subject, and I wanted to be sure, if this does conform to the objections raised by the Comptroller General.

Mr. GRAHAM. We can assure you that that is the case, because the Comptroller General had the last word. He made the final suggestions and the suggested amendment which we adopted.

Mr. HARDY. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That no provision of any contract entered into by the United States, relating to the finality or conclusiveness, in a dispute involving a question arising under such contract, of any decision of an administrative official, representative, or board, shall be pleaded as limiting judicial review of any such decision to cases in which fraud by such official, representative, or board is alleged; and any such provision shall be void with respect to any such decision which the General Accounting Office or a court, having jurisdiction, finds fraudulent, grossly erroneous, so mistaken as necessarily to imply bad faith, or not supported by reliable, probative, and substantial evidence.

SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of an administrative official, representative, or board.

With the following committee amendment:

Page 1, line 3, strike out all after the enacting clause and insert "That no provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however,* That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

"SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board."

The committee amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "An act to permit review of decisions of the heads of departments, or their representatives or boards, involving questions arising under Government contracts."

A motion to reconsider was laid on the table.

DISCONTINUING CERTAIN REPORTS NOW REQUIRED BY LAW

The Clerk called the bill (H. R. 6290) to discontinue certain reports now required by law.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. BROOKS of Louisiana. Reserving the right to object, Mr. Speaker, I would like for the chairman of the committee to explain what reports are being eliminated.

Mr. HOFFMAN of Michigan. Mr. Speaker, the report came from the full committee but the work was done under the direction of Mr. Ray Ward for the Subcommittee on Intergovernmental Relations of which the gentlewoman from Indiana [Mrs. HARDEN] is chairman. If the gentleman will refer to page 2 of the committee report—

Mr. BROOKS of Louisiana. Would the gentleman mind explaining it to the House?

Mr. HOFFMAN of Michigan. I am trying to do just that. The purpose of the bill is to do away with some statutory provisions which require departments of the Government to make various reports which experience has demonstrated to be unnecessary. The gentleman will find that on page 2 and subsequent pages of the report, which is very complete, if the gentleman will look at it. It points out in detail the reports which are dispensed with.

It is a question whether legislation previously enacted requiring these reports has been helpful or has not, whether there has been a savings or has not. The committee found that the cost of preparing the reports was greater than the savings that were made.

Mr. BROOKS of Louisiana. This would discontinue reports that are of no use to the Congress.

Mr. HOFFMAN of Michigan. That is about the substance of it.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, That the following reports or statements now required by law are hereby discontinued, and all acts or parts of acts herein cited as requiring the submission of such reports or statements are hereby repealed to the extent of such requirement:

REPORTS UNDER EACH EXECUTIVE DEPARTMENT AND INDEPENDENT ESTABLISHMENT

1. The annual report of the head of each Federal agency as required by the Federal Tort Claims Act of 1946, as amended (62 Stat. 983; 28 U. S. C. 2673).

2. The inclusion in the annual report to Congress of each executive department or independent establishment of a statement of receipts from fees or charges paid to such department or establishment under all acts of Congress (47 Stat. 411; 5 U. S. C. 104a).

3. The quarterly report to Congress by each department and agency of the name of each claimant to whom relief has been granted under the act of August 7, 1946, as amended, together with the amount of such relief and a brief statement of the facts and the administrative decision (60 Stat. 902; 41 U. S. C. 106).

REPORTS UNDER THE DEPARTMENT OF AGRICULTURE

4. The annual report to Congress of the activities of, expenditures by, and donations to the four regional research laboratories authorized by the Agriculture Adjustment Act of 1938 (52 Stat. L. 37; 7 U. S. C. 1292 (e)).

5. The annual report to the Congress of all persons against whom claims under the Bankhead-Jones Farm Tenant Act in excess of \$1,000 have been compromised, the address of such person, the nature of the claim, the amount of the compromise, and the reason therefor (60 Stat. 1066; 7 U. S. C. 1015 (g)).

6. The statement of the Secretary of Agriculture required to be included in his annual report to Congress, with respect to the status of the Farm Tenant-Mortgage Insurance Fund (60 Stat. L. 1076; 7 U. S. C. 1005a).

7. The annual report by the Secretary of Agriculture to the President accounting for all moneys received and expended by him (45 Stat. 993; 5 U. S. C. 557).

8. The annual report by the Secretary of Agriculture to the Congress on research work being performed under contracts or cooperative agreements pursuant to the act of August 14, 1946 (60 Stat. 1086, 1090; 7 U. S. C. 427j and 1624).

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued April 30, 1954
For actions of April 29, 1954
83rd-2nd, No. 79

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HIGHLIGHTS: House passed defense appropriation bill. (Amendment to increase milk ration was ruled out of order.) House Rules Committee cleared St. Lawrence seaway bill. Senate concurred in House amendment to bill authorizing court review of Government contracts. Sen. Thye introduced and discussed bill to distribute surpluses through voluntary agencies to needy abroad.

SENATE

1. CONTRACTS. Concurred in the House amendment to S. 24, to provide for court review of Government contracts (pp. 5413-4). This bill will now be sent to the President.
2. PRICE SUPPORTS. Sen. Morse inserted a statement by T. V. Weatherford opposing flexible price supports (pp. 5435-6).
3. FOREIGN TRADE. Sen. Malone spoke in favor of protective tariffs, etc. (pp. 5429-31).
4. ST. LAWRENCE SEAWAY. Sen. Wiley spoke in favor of this project (p. 5421).
5. RECESSED until Mon., May 3 (p. 5436). The bill to amend the Taft-Hartley law was made the unfinished business (p. 5433).

HOUSE

6. DEFENSE APPROPRIATION BILL, 1955. Passed with amendments this bill, H. R. 8873 (pp. 5438-79). An amendment by Rep. Roosevelt, to increase the daily milk ration to 1 quart and to have the extra amount paid for from CCC funds, was ruled out of order (pp. 5446-7).
7. ST. LAWRENCE SEAWAY. The Rules Committee reported a resolution for consideration of S. 2150, to authorize this project (p. 5494).
8. INTERGOVERNMENTAL RELATIONS. Rep. Goodwin was appointed to the Committee on Intergovernmental Relations (p. 5437).

9. CONTAINERS. The Interstate and Foreign Commerce Committee was authorized to report today (during adjournment) H. R. 8357, to amend the Standard Container Act so as to provide for a 3/8 bushel basket (p. 5484).
10. DAIRY SURPLUS. Rep. Marshall inserted USDA press releases on plans to use some of the dried-milk surpluses for livestock feed, and he objected to this plan (pp. 5484-5).
11. ADJOURNED until Mon., May 3 (p. 5494). Rep. Halleck announced that the Consent Calendar will be considered Mon., the Private Calendar on Tues., and that debate on the St. Lawrence seaway is to begin Wed. (p. 5480).

BILLS INTRODUCED

12. SURPLUS COMMODITIES. S. 3377, by Sen. Thye, to provide for the effective distribution through voluntary agencies of surplus agricultural commodities abroad to needy persons; to Agriculture and Forestry Committee (pp. 5406-7). Remarks of author (pp. 5407-9).
13. FLAMMABLE FABRICS. S. 3379, by Sen. Purtell, to amend the Flammable Fabrics Act so as to exempt fabrics and wearing apparel which are not highly flammable; to Interstate and Foreign Commerce Committee (p. 5407). Remarks of author (pp. 5409-13).
14. PERSONNEL. H. R. 8947, by Rep. Broyle, to amend the Civil Service Retirement Act; to Post Office and Civil Service Committee (p. 5494).
H. R. 8950, by Rep. Scott, to extend the Classification Act to additional positions; to Post Office and Civil Service Committee (p. 5494).
15. SURPLUS COMMODITIES. H. R. 8952, by Rep. Roosevelt, to authorize the transfer of funds available to CCC so as to increase the ration of whole fluid milk for the armed services and for school lunches; to Agriculture Committee (p. 5494).
16. SURPLUS PROPERTY. H. R. 8953, by Rep. Wampler, to permit volunteer fire departments and rescue squads to receive property surplus to the needs of the Federal Government; to Government Operations Committee (p. 5494).

COMMITTEE HEARINGS RELEASED BY GPO

17. HOUSING. S. 2889, S. 2938, and S. 2949, proposed Housing Act of 1954. S. Banking and Currency Committee.
18. RECLAMATION. H. R. 4443, H. R. 4449, and H. R. 4463, Colorado River Storage Project. H. Interior and Insular Affairs Committee.

ITEMS IN APPENDIX

19. PRICE SUPPORTS. Sen. Kefauver inserted E. G. Shinner's article favoring price supports for small farmers only (pp. A3109-10).
Sen. Thye inserted an article by A. D. Stedman opposing the reduction in dairy supports (p. A3116).
Rep. Patterson inserted a report on the Conn. College of Agriculture conference on agricultural policy, analyzing price-support problems (pp. A3117-8).
Rep. King, Pa., inserted a Christian Science Monitor article favoring flexible price supports (p. A3125).
20. FERTILIZER. Rep. Hays, Ohio, inserted an Ohio Farm Bureau News article favoring the Hells Canyon project in order to get cheap power to develop the phosphate

loss of life or serious injury from wearing apparel made of highly flammable textiles without creating severe hardship to domestic and foreign trade in materials which have long been used with safety by the American consumer. The program being undertaken by the subcommittee and your statement concerning the possible need for amendment of the act, if it is found to be unduly restrictive and if no administrative remedy is available, should help to allay the concern of both foreign and domestic interests concerning the effect of the act.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary.

EMBASSY OF JAPAN,

Washington, D. C., April 23, 1954.
The Honorable WILLIAM A. PURTELL,
United States Senate.

DEAR SENATOR PURTELL: I am writing you to express my appreciation of your recent statement concerning the Flammable Fabrics Act and the severe hardship it will cause to certain segments of the textile business, especially the silk trade. Your recognition that the congressional intent in passing the act was not to prohibit the sale of traditional fabrics which have been used safely for years, but was rather to prevent the use of dangerously flammable textiles with a flash-burning rate, has been most encouraging to the Japanese people.

The people of Japan view with complete and sympathetic understanding the efforts of the Congress of the United States to protect the American public from the recurrence of the recently publicized and most unfortunate accidents. They recognize the need for a protective law but are hopeful that the legislation may be so drafted or interpreted as to permit the import of sheer silk manufactures, which have a long history of safe use.

As you know, silk fabrics and manufactures are among the most important exports from Japan to the United States. Any substantial reduction in this trade, even though unintentional, would be a serious blow to my country's attempt to attain economic stability.

I wish to you and your subcommittee success in your endeavor to limit the effects of the act to textiles which are truly dangerous. Again may I state the thanks of the Japanese people for your understanding approach to their problem.

Sincerely yours,

SADAO IGUCHI,
Ambassador.

AMENDMENT OF LABOR MANAGEMENT RELATIONS ACT, 1947— AMENDMENT

Mr. GOLDWATER submitted an amendment intended to be proposed by him to the bill (S. 2650) to amend the Labor Management Relations Act, 1947, and for other purposes, which was ordered to lie on the table and to be printed.

PROPOSED CAPITAL GAINS TAX ON FOREIGN TRADERS

Mr. GILLETTE. Mr. President, in the report submitted by the Senate Committee on Agriculture and Forestry on August 23, 1950, covering the investigations of coffee prices which the Subcommittee on Utilization of Farm Crops conducted during 1949-50, appeared this sentence:

About 50 percent of the long position in coffee on the New York Coffee and Sugar

Exchange, Inc., as of March 31, 1950, was owned by foreign interests, and fully 30 percent controlled through one broker in Brazil."

Among the several recommendations which the committee made in its report was this one:

No. 6: That in order to curb the undesirable speculation now existing in dealing in coffee futures the revenue laws of the United States be amended so as to tax profits of foreign interests made on the commodity exchanges of the United States.

In the appendix of the report appeared a draft of an amendment to the Internal Revenue Code which the committee recommended be adopted by the Congress. As no Member of the House of Representatives has yet offered this type of an amendment, and in view of the fact that the tax revision bill is now pending before the Senate Finance Committee, I am today submitting this proposal in the form of an amendment to H. R. 8300 for the consideration of the Finance Committee and of the Senate.

The amendment would impose on the capital gains of nonresident foreign individuals, partnerships or corporations, not engaged in trade or business in the United States, a tax of 30 percent of the amount by which such gains, derived from sources within the United States, from sales or exchanges, exceed losses, allocable to sources within the United States, from such sales or exchanges.

Because of the unfortunate fact that neither the Senate Banking and Currency Committee investigation of the recent price rise in coffee nor the Federal Trade Commission investigation of the same subject has been completed, it is impossible to know to what extent the situation that existed in 1950 still holds at the present time. But it is incontrovertible, I believe, that during the price rise of this past December and January foreign speculators were extremely active on the coffee exchange. They have unquestionably earned tremendous profits from their operations and the least the American people can expect, if they cannot be protected from such raids on their pocketbooks, is that those who earn these fortunes from speculating on our commodity exchanges should have to pay a fair tax to our Federal Treasury.

I now submit amendments intended to be proposed by me to the bill (H. R. 8300) to revise the internal revenue laws of the United States, and ask that they be referred to the Committee on Finance.

The PRESIDING OFFICER. The amendments will be received and printed, and will be referred to the Committee on Finance.

AMENDMENT OF LABOR MANAGEMENT RELATIONS ACT, 1947— MINORITY VIEWS

Mr. MURRAY. Mr. President, I ask unanimous consent that the views of the minority on Senate bill 2650, to amend the Labor Management Relations Act, 1947, and for other purposes, may be submitted and printed during the recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVIEW OF DECISIONS OF GOVERNMENT CONTRACTING OFFICERS IN CERTAIN CASES

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 24) to permit review of decisions of Government contracting officers involving questions of fact arising under Government contracts in cases other than those in which fraud is alleged, and for other purposes, which were to strike out all after the enacting clause and insert:

That no provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representatives or board is alleged: *Provided, however,* That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

Sec. 2. No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

And to amend the title so as to read: "An act to permit review of decisions of the heads of departments, or their representatives or boards, involving questions arising under Government contracts."

Mr. McCARRAN. Mr. President, this is a bill which passed the Senate on June 8, 1953, and which has now been passed by the House, in amended form.

The purpose of the proposed legislation is to overcome the inequitable effect, under the decision of the Supreme Court in the Wunderlich case, of language in Government contracts which makes the decision of the contracting officer or the head of the agency final, with respect to questions of fact. To put it another way, the objective of this bill is to preserve the right of review by the courts in cases involving action by a contracting officer which is arbitrary, capricious, fraudulent, or so grossly erroneous as necessarily to imply bad faith.

The language of the House bill, while quite different from the language approved in the Senate, is designed to accomplish the same purpose. It is my understanding the Department of Justice takes the view that the House language will accomplish the same purpose as the Senate language. It is my further understanding that the Comptroller General of the United States has expressed complete satisfaction with the House language, and has declared that in his opinion it will accomplish the purposes sought to be served by the Senate language.

As author of the Senate bill, I want to say that I am not sure that the House language gives protection as complete as that which would have been given under the language approved by the Senate. However, I am willing to go along with the House language, in view of the assurances which I have mentioned, and the further fact that so far as I know

April 29

all others interested in this legislation are satisfied with the language approved by the House.

Accordingly, Mr. President, I now move that the Senate concur in the House amendments to the bill S. 24.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada [Mr. McCARRAN].

Mr. CASE. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. CASE. Can the Senator from Nevada tell us how the assurance was given that the bill was satisfactory to the General Accounting Office? Would the Senator kindly restate the assurance which he voiced with reference to the opinion of the General Accounting Office?

Mr. McCARRAN. The General Accounting Office is satisfied with the language in the House bill. It has assured me of that.

Mr. CASE. The Comptroller General has assured the Senator from Nevada on that point?

Mr. McCARRAN. That is correct; otherwise I would not care to go along.

Mr. CASE. Mr. President, I have no objection.

Mr. THYE. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. THYE. As I understand, the bill was passed by the Senate, and a similar bill was passed by the House. The only question involved is a modification of the language in the Senate bill, and the two bills agree in their effect, so to speak?

Mr. McCARRAN. That is correct.

Mr. THYE. There is nothing else of a legislative nature involved. Is that correct?

Mr. McCARRAN. That is correct.

Mr. THYE. I cannot see any objection to the enactment of the legislation.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada [Mr. McCARRAN].

The motion was agreed to.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE APPENDIX

On request, and by unanimous consent, addresses, editorials, articles, and so forth, were ordered to be printed in the Appendix, as follows:

By Mr. BEALL:

Manifesto to the Bulgarian people, in honor of the 75th anniversary of the Tarnovo Constitution, to be broadcast over Radio Free Europe.

By Mr. McCARRAN:

Article entitled "Pilot Error and Those Unanswered Questions," written by Ed Modes, editor of Airline Pilot, and published in the Airline Pilot for March 1954.

Address delivered by Clarence N. Sayen before Flight Safety Foundation at the Bermuda Air Safety Seminar, on the subject of Organization for Flight Safety.

Address delivered by Edward S. Meaney, Director of the Visa Office of the Department of State, before 24th annual conference of National Council on Naturalization and Citizenship, in New York, N. Y., on April 2, 1954.

By Mr. JOHNSON of Texas:
Prize essay entitled "What Makes America Great?"

By Mr. JOHNSON of Colorado:
Article entitled "Our Disgrace in Indochina," written by William Worthy, Jr., of recent date.

Letter from Henry Wales, appearing in the Chicago Daily Tribune of April 28, 1954.

By Mr. KEFAUVER:
Statement entitled "The 1953-54 Recess: The Paradox of Efficiency," by E. G. Shinner, chairman, the Shinner Foundation, Chicago, Ill.

By Mr. ROBERTSON:
Letter addressed to himself by Joseph A. Jordan, Jr., of Norfolk, Va., a wounded veteran of World War II, expressing appreciation for the privilege of completing his college education under the GI Act.

By Mr. MURRAY:
Letter addressed to American Medical Association by a veteran, alleging unjustified investigation of personal financial status.

Article published in the Montana Legionnaire for April 1954 dealing with Veterans' Administration medical program.

By Mr. THYE:
Article entitled "Dairy Shockers," written by Alfred D. Stedman, and published in the St. Paul Pioneer Press of April 25, 1954.

ARMORING THE SUPREME COURT EDITORIAL FROM THE WASHINGTON POST AND TIMES-HERALD

Mr. BUTLER of Maryland. Mr. President, on Saturday April 17, 1954, there appeared in the Washington Post and Times-Herald an editorial entitled "Armoring the Supreme Court." Within the next 2 weeks, Mr. President, debate will open on the floor of the Senate on Senate Joint Resolution 44, which I introduced in February 1953. The joint resolution has for its purpose the strengthening of the Supreme Court, both as to its composition and as to its jurisdiction. Accordingly, I ask unanimous consent that the editorial be printed at this point in the body of the RECORD, as a part of my remarks, for the information of the Senate.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

ARMORING THE SUPREME COURT

Too little attention has been given to the proposed constitutional amendment reported out by the Senate Judiciary Committee recently to buttress the independence of the Supreme Court. As the Court is now functioning smoothly, there is a strong disposition to let well enough alone. Some critics of the proposal also fear that it might cast the Court into too rigid a mold. In our opinion, however, a strong case can be made for fortifying the independence of the Court in those spots where it has been attacked in the past.

History has amply demonstrated that the Founding Fathers, while creating an independent Supreme Court left some gaping holes in its armor. The most notorious of these is the power of Congress to change the number of Justices and thus enable the President and Senate indirectly to influence the opinions of the Court. The second grave defect is the constitutional phrase which enables Congress to take away the Court's appellate jurisdiction. On one regrettable occasion in 1868 Congress exercised this power to prevent the Court from hearing an appeal involving a writ of habeas corpus. In effect, then, enforcement of the Bill of Rights is left to the discretion of Congress.

This bit of history should be well remembered when the proposed amendment comes up for debate. An editor named McCordle sought a writ of habeas corpus after being arrested by the military in the post-Civil-War period and held for trial before a military commission on charges that he had published libelous and incendiary articles. When his petition was denied by the lower courts, he appealed to the Supreme Court. But before his case could be decided by that tribunal, Congress passed a law denying it the right to hear appeals in habeas corpus cases. The Court then acknowledged the right of Congress to determine the extent of its appellate jurisdiction and refused to decide the case.

The proposed amendment would prevent such legislative invasions of the judicial sphere by specifically giving the Court appellate jurisdiction, both as to law and fact, "in all cases arising under this Constitution." Congress might then limit appeals to the Supreme Court in cases involving Federal statutes, but it could not undermine the Constitution by preventing enforcement of its guarantees in the highest Court in the land.

No less important is the section permanently fixing the membership of the Supreme Court at nine. This will be generally interpreted as a Republican effort to prevent any repetition of President Roosevelt's efforts to pack the Court in 1937. It is probably more significant, however, as a means of preventing the kind of congressional interference with the Court that occurred in the Andrew Johnson administration. Congress reduced the number of Justices from 9 to 7 to prevent the President from having any opportunity to appoint Justices who might favor his policies. This was court-packing in reverse.

Two other provisions have been included in the proposed amendment. It would force the retirement of all Supreme Court Justices at the age of 75 and make any Justice ineligible to serve as President unless he had been off the bench at least 5 years. The 75-year cutoff might occasionally deprive the Court of an Oliver Wendell Holmes, but it would more frequently force out men no longer capable of carrying the arduous burden of a Supreme Court Justice. Five years probably is too long a period to make a Justice wait if he wishes to resign and try for the Presidency, but the idea of discouraging political ambitions on the Bench is sound. Not only that Justices sometimes need protection from politicians who are inclined to "raid" the Supreme Court. To our way of thinking the advantages that would flow from the amendment outweigh the argument against cluttering the Constitution with details.

COMMERCE DEPARTMENT REPORT ON MARITIME SUBSIDY POLICY

Mr. BUTLER of Maryland. Mr. President, the Commerce Department's report on Maritime Subsidy Policy, based upon its extensive study in the light of present national requirements for a merchant marine and a shipbuilding industry, will be presented to the Senate Water Transportation Subcommittee on Monday next, at 2:30 p. m., in room G-16 of the Capitol.

In view of the long-range significance of the report, its importance to American shipping, and the assistance it undoubtedly will afford to Members of Congress of both Houses in connection with future legislative proposals regarding the maritime industry, our subcommittee has invited the members of the House Mer-

**Public Law 356 - 83d Congress
Chapter 199 - 2d Session
S. 24**

AN ACT

All 68 Stat. 81.

To permit review of decisions of the heads of departments, or their representatives or boards, involving questions arising under Government contracts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no provision of any contract entered into by the United States, relating to the finality or conclusiveness of any decision of the head of any department or agency or his duly authorized representative or board in a dispute involving a question arising under such contract, shall be pleaded in any suit now filed or to be filed as limiting judicial review of any such decision to cases where fraud by such official or his said representative or board is alleged: *Provided, however,* That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence.

SEC. 2. No Government contract shall contain a provision making final on a question of law the decision of any administrative official, representative, or board.

Approved May 11, 1954.

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